No. 4523

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

JOSEPH E. MARRON and GEORGE BIRDSALL,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

JOSEPH GORHAM,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

PATRICK KISSANE,
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

VOLUME I.

(Pages 1 to 352, Inclusive.)

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, First Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

For Defendants, Joseph E. Marron and George Birdsall:

HUGH L. SMITH, Esq., and CHARLES J. WISEMAN, Esq., San Francisco, Cal.

For Defendant, Patrick Kissane:

JOSEPH L. TAAFFE, Esq., San Francisco.

For Defendant, Joseph Gorham:

WILLIAM A. KELLY, Esq., San Francisco.

For Plaintiff:

UNITED STATES ATTORNEY, San Francisco.

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE and JOSEPH GORHAM,

Defendants.

PRAECIPE FOR TRANSCRIPT OF RECORD ON WRITS OF ERROR.

To the Clerk of Said Court:

Sir: Please prepare certified transcript on writs of error of Joseph E. Marron, George Birdsall, Patrick Kissane, and Joseph Gorham of the following pleadings, papers and orders:

1. Indictment.
2. Verdict of Jury.
3. Motions and arrest of judgment.
4. Motions for new trial.
5. Sentence of judgment.
6. Bill of exceptions as settled by Trial Judge.
7. Petition for writ of error of:
    a. Joseph E. Marron.
    b. George Birdsall.
    c. Patrick Kissane, and
    d. Joseph Gorham. [1*]
8. Order allowing writ of error for:
    a. Joseph E. Marron.
    b. George Birdsall.
    c. Patrick Kissane, and
    d. Joseph Gorham.
9. Assignment of errors of:
    a. Joseph E. Marron.
    b. George Birdsall.
    c. Patrick Kissane, and
    d. Joseph Gorham.
10. Bond of costs of:

*Page-number appearing at foot of page of original certified Transcript of Record.

a. Joseph E. Marron.
b. George Birdsall.
c. Patrick Kissane, and
d. Joseph Gorham.

11. Writ of error on behalf of:
    a. Joseph E. Marron.
    b. George Birdsall.
    c. Patrick Kissane, and
    d. Joseph Gorham.
12. Citation on writ of error on behalf of:
    a. Joseph E. Marron.
    b. George Birdsall.
    c. Patrick Kissane, and
    d. Joseph Gorham.
13. Praecipe for certified transcript.
14. Supersedeas bond on behalf of:
    a. Joseph E. Marron.
    b. George Birdsall.
    c. Patrick Kissane, and
    d. Joseph Gorham.
15. Motion to quash indictment on behalf of:
    a. George Birdsall, and [2]
    b. Charles Mahoney.
16. Petition to suppress evidence, on behalf of George Birdsall.
17. Plea in bar and petition to suppress evidence on behalf of George Birdsall.
18. Motion to quash indictment on behalf of Joseph Marron, and George Birdsall.
19. Petition for return of property and exclusion of evidence, on behalf of George Birdsall and Charles Mahoney.

20. Plea in bar and motion to suppress evidence on behalf of Joseph Marron.
21. Petition to suppress on behalf of Joseph E. Marron.
22. Petition to suppress on behalf of Joseph Marron.
23. Amended petition to suppress evidence on behalf of George Birdsall and Charles Mahoney.
24. Affidavits of:
    a. A. R. Shurtleff.
    b. W. F. Whittier.
    c. R. W. Rinckel.
    d. Perry Eyre.
25. Order for transfer of original exhibits.
26. Order that one engrossed bill of exceptions may be used on writ of errors.

Dated Feb. 6th, 1925.

HUGH L. SMITH,
CHAS. J. WISEMAN,
Attorneys for Joseph E. Marron and George Birdsall. [3]

JOS. L. TAAFFE,
Attorney for Patrick Kissane.
WILLIAM A. KELLY,
Attorney for Joseph Gorham.

[Endorsed]: Filed Feb. 6, 1925. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [4]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE and JOSEPH GORHAM,

Defendants.

INDICTMENT.

At a stated term of said court begun and holden in the city and county of San Francisco within and for the Southern Division of the Northern District of California on the second Monday in July in the year of our Lord one thousand nine hundred and twenty-four—

The Grand Jurors of the United States of America within and for the Southern Division of the Northern District of California on their oaths do allege, find, charge and present:

I.

That heretofore, to wit, on the 28th day of October, 1919, the Congress of the United States of

America passed an act entitled "An Act to prohibit intoxicating beverages and to regulate the manufacture, production, use and sale of high-proof spirits for other than beverage purposes, and to insure an ample supply of alcohol and promote its use in scientific research and in the development of fuel, dye, and other lawful industries," the short title of which is "National Prohibition Act," and which said act at all of the times hereinafter mentioned was and is now in full force and effect. [5]

II.

That under and pursuant to the provisions of the said act the Commissioner of Internal Revenue of the United States of America, with the approval of the Secretary of the Treasury of the United States, was and is authorized and empowered to make and prescribe regulations for carrying out the provisions of the said act.

III.

That the said Commissioner, with the approval of the said Secretary, heretofore, and on or about the 16th day of January, 1920, did make, prescribe and promulgate regulations entitled "Regulations relative to the manufacture, sale, barter, transportation, importation, exportation, delivery, furnishing, purchase, possession, and use of intoxicating liquor," approved January 16, 1920.

IV.

And the said Commissioner, with the approval of the said Secretary, heretofore, and on or about the 1st day of July, 1920, did make, prescribe, and pro-

mulgate modifications of regulations 60 entitled "Modification of Regulations No. 60 relative to the sale, use, transportation, delivery, and advertisement of intoxicating liquor," approved July 1, 1920.

V.

And the said Commissioner, under and pursuant to the authority conferred upon him by the said National Prohibition Act, as aforesaid, heretofore made, prescribed and promulgated records, applications for permits, permits, bonds, and forms to be used in and for the carrying out of the provisions of the said act, and which said records, applications for permits, permits, bonds, and forms of and for each thereof, respectively, were at all of the times herein mentioned required to be used in compliance with and in carrying out the provisions of the said act and said regulations, and at all of the times herein mentioned were in full force and effect. [6]

VI.

That under and pursuant to the provisions of said act and particularly by Section 1 of Title II thereof it is provided:

> "When used in Title II and Title III of this Act (1) The word 'liquor' or the phrase 'intoxicating liquor' shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spiritous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are

fit for use for beverage purposes; Provided, That the foregoing definition shall not extend to dealcoholized wine nor to any beverage or liquid produced by the process by which beer, ale, porter or wine is produced if it contains less than one-half of 1 per centum of alcohol by volume, and is made as prescribed in section 37 of this title, and is otherwise denominated than as beer, ale, or porter, and is contained and sold in, or from, such sealed and labeled bottles, casks, or containers as the Commissioner may by regulation prescribe.

(2) The word 'person' shall mean and include natural persons, associations, copartnerships, and corporations.

(3) The word 'commissioner' shall mean Commissioner of Internal Revenue.

(4) The term 'application' shall mean a formal written request supported by a verified statement of facts showing that the Commissioner may grant the request.

(5) The term 'permit' shall mean a formal written authorization by the Commissioner setting forth specifically therein the things that are authorized.

(6) The term 'bond' shall mean an obligation authorized or required by or under this act or any regulation, executed in such form and for such a penal sum as may be required by a court, the Commissioner or prescribed by regulation.

(7) The term 'regulation' shall mean any regulation prescribed by the Commissioner with the approval of the Secretary of the Treasury for carrying out the provisions of this act, and the Commissioner is authorized to make such regulations.

Any act authorized to be done by the Commissioner may be performed by any assistant or agent designated by him for that purpose. Records required to be filed with the Commissioner may be filed with an assistant commissioner or other person designated by the Commissioner to receive such records."

VII.

That under and pursuant to the provisions of the said act and particularly by Section 3 of Title II thereof, it is [7] provided that:

"No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

Liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the

Commissioner may, upon application, issue permits therefor."

VIII.

That under and pursuant to the provisions of the said act and particularly by Section 6 of Title II thereof, it is provided that:

"No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the Commissioner so to do, except that a person may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided, and except that any person who in the opinion of the Commissioner is conducting a *bona fide* hospital or sanitorium engaged in the treatment of persons suffering from alcoholism, may, under such rules, regulations, and conditions as the Commissioner shall prescribe, purchase and use, in accordance with the methods in use in such institution, liquor, to be administered to the patients of such institution under the direction of a duly qualified physician employed by such institution * * * . Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. * * * No permit shall be issued to anyone to sell liquor at retail, unless the sale is to be made through a pharmacist designated in the permit and duly licensed under the laws of his state to compound and dispense medicine prescribed by a duly licensed physician. * * * Every permit

shall be in writing, dated when issued, and signed by the commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued and shall designate and limit the acts that are permitted and the time when and place where such acts may be performed. No permit shall be issued until a verified, written application shall have been made therefor, setting forth the qualification of the applicant and the purpose for which the liquor is to be used.

"The commissioner may prescribe the form of all permits and applications and the facts to be set forth therein. Before any permit is granted the commissioner may require a bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this title. * * * [8]

"Nothing in this title shall be held to apply to the manufacture, sale, transportation, importation, possession, or distribution of wine for sacramental purposes, or like religious rites, except section 6 (save as the same requires a permit to purchase) and section 10 hereof, and the provisions of this Act prescribing penalties for the violation of either of said sections. No person to whom a permit may be issued to manufacture, transport, import, or sell wines for sacramental purposes or like religious rites, shall sell, barter, exchange, or furnish any such to any person not a rabbi, minister of the

gospel, priest, or an officer duly authorized for the purpose by any church or congregation, nor to any such except upon an application duly subscribed by him, which application, authenticated as regulations may prescribe, shall be filed and preserved by the seller."

And the said Commissioner heretofore pursuant to the authority conferred upon him by said National Prohibition Act, did prescribe the form of all permits and applications and the facts to be set forth therein and did require a bond and prescribe the form thereof and did fix the penal amount of said bond; and the said applications for a permit, the permits, the bond and the requirements thereof at all of the times herein mentioned were and are now in full force and effect.

IX.

That under and pursuant to the provisions of said act and particularly by Section 10 of Title II thereof, it is provided that:

"No person shall manufacture, purchase for sale, sell, or transport any liquor without making at the time a permanent record thereof, showing in detail the amount and kind of liquor manufactured, purchased, sold or transported, together with the names and addresses of the persons to whom sold, in case of sale, and the consignor and consignee in case of transportation, and the time and place of such manufacture, sale, or transportation. The commissioner may prescribe the form of such record,

which shall at all times be open to inspection as in this act provided."

That the said Commissioner did prescribe and promulgate the record and form of said record and which said records and forms thereof so prescribed and promulgated at all of the times herein mentioned were and are now required to be made and kept as provided by and in said act and said Section 10 of said Title II thereof, and as provided by and in said regulations. [9]

X.

That under and pursuant to the provisions of said act and particularly by Section 13 of Title II thereof, it is provided that:

> "It shall be the duty of every carrier to make a record at the place of shipment of the receipt of any liquor transported, and he shall deliver liquor only to persons who present to the carrier a verified copy of a permit to purchase which shall be made a part of the carrier's permanent record at the office from which delivery is made.
>
> The agent of the common carrier is hereby authorized to administer the oath to the consignee in verification of the copy of the permit presented, who, if not personally known to the agent, shall be identified before the delivery of the liquor to him. The name and address of the person identifying the consignee shall be included in the record."

XI.

That under and pursuant to the provisions of said

act and particularly by Section 14 of Title II thereof, it is provided that:

> "It shall be unlawful for a person to use or induce any carrier, or any agent or employee thereof, to carry or ship any package or receptacle containing liquor without notifying the carrier of the true nature and character of the shipment. No carrier shall transport nor shall any person receive liquor from a carrier unless there appears on the outside of the package containing such liquor the following information:
>
> Name and address of the consignor or seller, name and address of the consignee, kind and quantity of liquor contained therein, and number of the permit to purchase or ship the same, together with the name and address of the person using the permit."

XII.

That under and pursuant to the provisions of said act and particularly by Section 15 of Title II thereof, it is provided that:

> "It shall be unlawful for any consignee to accept or receive any package containing any liquor upon which appears a statement known to him to be false, or for any carrier or other person to consign, ship, transport, or deliver any such package, knowing such statement to be false." [10]

XIII.

That under and pursuant to the provisions of

said act and particularly by Section 16 of Title II thereof, it is proveded that:

> "It shall be unlawful to give to any carrier or any officer, agent, or person acting or assuming to act for such carrier an order requiring the delivery to any person of any liquor or package containing liquor consigned to, or purporting or claimed to be consigned to a person, when the purpose of the order is to enable any person not an actual *bona fide* consignee to obtain such liquor."

XIV.

That under and pursuant to the provisions of said act and particularly by Section 21 of Title II thereof, it is provided that:

> "Any room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this Title, and all intoxicating liquor and property kept and used in maintaining the same, is hereby declared to be a common nuisance."

XV.

That under and pursuant to the provisions of the said act and particularly by Section 25 of Title II thereof, it is provided that:

> "It shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no property rights shall exist in any such liquor or property. * * * "

XVI.

That under and pursuant to the provisions of the said act and particularly by Section 26 of Title II thereof, it is provided that:

> "When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors, found thereon being transported contrary to law. * * * "
> [11]

XVII.

That under and pursuant to the provisions of the said act and particularly by Section 33 of Title II thereof, it is provided that:

> "After Feburary 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be *prima facie* evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title. * * * "

XVIII.

That by paragraph I of said "Modifications of Regulations No. 60" it is provided that:

> "No person holding permit authorizing the sale of intoxicating liquor may ship or deliver liquor pursuant to permit to purchase (Form 1410) except

(a) To the permittee named in Form 1410, if personally known to the vendee, or identified by some reputable person, personally known to him;

(b) To a *bona fide* employee of such permittee who is personally known to the vendor to be such employee, or who is identified by some reputable person personally known to the vendor; or

(c) To a person holding permit to transport intoxicating liquor for transportation to the permittee named in such form 1410, in accordance with paragraph 10 hereof. In all cases of shipment or delivery of intoxicating liquor under authority or permit to purchase (Form 1410), the vendor must indicate on the copy of such form retained by him, as well as on the copy to be forwarded by him to the director, the name of the person to whom delivery was made, stating whether such person is the permittee named in Form 1410, or such permittee's employee, or a carrier holding permit to transport, in which case the number of the transportation permit must be shown. If identification is necessary under the conditions stated above, the name and address of the person identifying the one to whom delivery was made must also be shown on both copies of Form 1410."

XIX.

That by paragraph 10 of said "Modifications of Regulations No. 60," it is provided that:

"No person holding a permit to transport intoxicating liquor may make delivery of any liquor transported by him, except at the point of destination indicated in Form 1410, covering the shipment, and to the consignee named in such form, or to the *bona fide* employee or an agent of such consignee authorized to accept delivery for him. No carrier may deliver any intoxicating liquor transported by him except upon receipt of copy of Form 1410 covering the same, verified under oath, with exceptions only as stated in Section 87 of Regulations No. 60. Such copy of Form 1410 must be filed by the carrier at [12] the office from which delivery was made, and must bear notation thereon of the name of the person to whom delivery was made and, in the event of identification by some other person, the name and address of such other person. Carriers are also required to keep records at the point of shipment, covering all intoxicating liquor transported by them, as provided in Section 6 of Regulations No. 60."

XX.

That by paragraph II of said "Modifications of Regulations No. 60," it is provided that:

"In order for any person holding a permit authorizing the procurement or delivery of intoxicating liquor, to be authorized to transport such liquor without the necessity of obtaining a permit to transport, within the contemplation of Section 83 of Regulations No. 60, it is

necessary that the transportation of such liquor be done by him personally, or by some person regularly and exclusively in his employ, and that the right to the possession of the vehicle used for such transportation be vested in such permittee."

XXI.

That by Section 1, Article I, of Regulations No. 60, it is provided that:

"(d) That words 'inside Commissioner' shall mean the Federal Prohibition Commissioner.

(a) The word 'Act' shall mean the Act of October 28, 1919.

(e) The word 'Director' or the phrase 'Federal Prohibition Director' shall mean the person having charge of the administration of Federal Prohibition in any state."

XXII.

That by Section 6 of Article III of said Regulations No. 60, it is provided that:

"All persons desiring to manufacture, sell, barter, transport, import, export, deliver, furnish, prescribe, purchase, possess or use intoxicating liquor, for the nonbeverage purposes herein authorized, must procure permits therefor in the manner hereinafter prescribed, except that no permit is required to be obtained under these regulations by a person operating an industrial alcohol plant, or a person using liquor in the manufacture of denatured alcohol or rum, who has obtained permit under regula-

tions No. 60; by persons procuring liquor for medicinal purposes upon prescriptions of physicians holding permits to prescribe; by rabbis, ministers of the gospel, priests, or officials duly authorized for the purpose by a church or congregation to procure its use or furnish wines for sacramental purposes or like religious rites; by persons to whom wine is furnished by such rabbis, ministers of the gospel, [13] priests, or officials for sacramental purposes, or like religious rites; or by persons owning warehouse certificates to cover possession of the distilled spirits covered thereby."

XXIII.

That by Section 8 of Article III of said Regulations 60, it is provided that:

"Persons desiring to procure any permit required by these regulations, other than permits to purchase, must submit applications for permit Form 1404, in triplicate, clearly setting forth all the data required by the regulations dealing with the particular class or classes into which they fall."

XXIV.

That by Section 14 of Article III of said Regulations 60, it is provided that:

"Where the same person operates several places of business for which he desires to obtain permits, a separate application must be filed and a separate permit procured covering each place of business, but only one bond need be filed covering all such places of business

operated by the same person within any one state."

XXV.

That by Section 15 of Article III of said Regulations 60, it is provided that:

"Every permit will clearly and specifically designate and limit the acts that are permitted, and the time when, and the place where, such acts may be permitted. All permits issued hereunder are nontransferable.

XXVI.

That by Section 20 of Article III of said Regulations 60, it is provided that:

"All persons desiring to obtain permits provided by these regulations (except as otherwise provided by Section 20) must at or before the time of filing application therefor, file with the Director a bond, in duplicate, on Form 1408, or Form 1409, to insure compliance with the provisions of this act and these regulations, as well as to cover any taxes and penalties which may be imposed under the Internal Revenue Laws."

XXVII.

That by Section 54 of Article VIII of said Regulations 60, it is provided that: [14]

"Any person entitled to procure intoxicating liquor in accordance with the provisions of these regulations must, in order to obtain such liquor, secure permits to purchase on Form 1410 from the Director, and no person is authorized to furnish or deliver intoxicatong li-

quor except upon receipt of permit to purchase, unless otherwise specifically provided in these regulations."

XXVIII.

That by Section 58 of Article IX of said Regulations 60, it is provided that:

"Any person who desires to obtain permit to sell intoxicating liquor in quantities of 5 wine gallons, or more, at the same time, for the nonbeverage purposes authorized, should file application on Form 1404 as prescribed in Article III. In filing application for permit such person should specifically set forth the kind and maximum quantity of liquor to be sold at any one time, or in case a person is lawfully in the possession of intoxicating liquor. and desire to obtain a permit to sell the same, he should state in his application the amount and kind of liquor so possessed.

In all cases it must be stated that such liquor will be sold by him only in wholesale quantities. Permits will not be issued to deliver any intoxicating liquor, produced under authority of Article VI, for conversion into nonalcoholic beverages.

(a) Permits to sell intoxicating liquor in quantities of less than 5 wine gallons may be obtained only by retail druggists or pharmacists, as set out in Article XII, provided, however, that when a person is engaged in business as both wholesale and retail druggist, he may obtain permit to sell intoxicating liquor in

both wholesale and retail quantities. All sales in retail quantities must be made through a pharmacist.

(b) Persons obtaining permits to deliver any intoxicating liquor in wholesale quantities may procure such liquors from other persons authorized to sell the same upon furnishing permits to purchase on Form 1410.

(c) Intoxicating liquor so procured by such persons may only be sold or furnished by them in wholesale quantities to other persons entitled to procure same, unless otherwise provided by the terms of the permit. Such dealers may furnish or deliver intoxicating liquor only upon receipt of permit to purchase, except in case of sacramental wines, where applications on Form 1412 are received, as hereinabove provided.

(e) All persons dealing in intoxicating liquor are required to keep record 52 and Supplementary Record 52, containing detailed entries, covering all receipts and deliveries of liquor by them, and to keep a permanent file, containing a copy of each permit to purchase, upon which deliveries of intoxicating liquor are made to or by them.

(f) All persons making sale of intoxicating liquor [15] in wholesale quantities are required to affix to the containers of such liquor a label, to be provided by them, bearing the following data:

(1) Name of manufacturer.
(2) Kind, quantity in wine gallons and proof contents.
(3) Name of seller.
(4) Date of sale.
(5) Name of purchaser.

(g) Such labels are subject to all the requirements of Article XVIII."

XXIX.

That by Section 80 of Article XV of said Regulations 60, it is provided that:

"All persons holding permits under these regulations to manufacture, sell, rectify, use or transport intoxicating liquor are authorized to possess intoxicating liquor, lawfully manufactured or procured by them, for the purpose and at the places designated in their respective permits.

(a) Intoxicating liquor may not be possessed by persons not holding permits under these regulations, or by persons holding such permits for other purposes, or at other places than authorized in their respective permits, except that intoxicating liquor lawfully procured by the owner thereof, prior to January 17, 1920, for beverage purposes, may be possessed in the private dwelling of such owner, where the same is occupied by him solely as his residence or place of abode, without the necessity of holding a permit, provided, such liquor is for the use only for the personal consumption of such owner and his family resid-

ing on such dwelling, and of his *bona fide* guests, when entertained by him therein."

XXX.

That by Section 83 of Article XVI of said Regulations 60, it is provided that:

"All permits authorizing the delivery or procurement of intoxicating liquor confer upon the permittee the right to have same transported by a carrier holding a permit to transport, or to transport such liquor by any method of delivery, from persons from whom he is authorized to receive such liquor or to persons to whom he is authorized to deliver the same at the place of business stated in the form of permit to purchase or application covering the shipment."

XXXI.

That by Section 84 of Article XVI of Regulations 60, it is provided that:

"Any person entitled to possess intoxicating liquor [16] for nonbeverage purposes may have any liquor which he possesses, transported from one place of business to another place of business covered by a permit held by him."

XXXII.

That by Section 87 of Article XVI of said Regulations 60, it is provided that:

"Persons holding permits to transport intoxicating liquor are authorized to deliver liquor transported by them at the point of destination only to the consignee named and only upon receipt from him of copy of form of

permit to purchase, Form 1410, verified under oath."

XXXIII.

That by Section 88 of Article XVI of said Regulations 60, it is provided that:

"Every person holding a permit to transport intoxicating liquor is required to permanently file, at the point of destination in a file or binder separate from other records, a copy of each form of permit to purchase or application upon which liquor is delivered by him, upon which copy should be noted the date when the liquor was delivered, and, in cases where delivered to an agent of the consignee, the name and address of such agent."

XXXIV.

That the defendants herein and hereinafter named were not nor was either or any of them at the time of entering into the conspiracy, combination, confederation, and agreement hereinafter set out, or at any of the times herein mentioned a physician, druggist, pharmacist or engaged in conducting a *bona fide* hospital or sanitarium engaged in the treatment of persons suffering from alcoholism under the direction of a duly qualified physician, and that the said intoxicating liquor herein and hereinafter mentioned, to wit, whiskey, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, was not and would not be purchased, possessed or transported by said defendants herein, or by either or any of them, for sacramental pur-

poses, or like religious rites, nor purchased, possessed, or transported by said defendants or either or any of them by prescription of physician holding permits to prescribe for medicinal purposes, nor were the said defendants herein and hereinafter named, or either or any of them at [17] any of the times herein mentioned conducting or operating under any permit, or at all conducting or operating any industrial alcohol plant or using any liquor in the manufacture of denatured alcohol or rum; that the said defendants, and each of them, at all of the times herein mentioned were persons who before purchasing, receiving, possessing or transporting any intoxicating liquor, as defined by said section 1 of Title II of said act, were required to make application for, give a bond and secure a permit from the Commissioner of Internal Revenue so to do as provided by the said act and said regulations hereinbefore set out; and the said defendants had not, nor had either or any of them at any of the times herein in this indictment mentioned made any application, given any bond, or secured any permit to purchase, possess or transport said or any intoxicating liquor as defined by said Section 1 of said Title II of said act; that the said defendants were not, nor was either or any of them exempt from making application, giving a bond and securing permits for the purpose, possession and transportation of intoxicating liquor as required and provided by said act and said regulations.

XXXIV(a).

And the Grand Jurors of the United States of America, within and for the Southern Division of the Northern District of California on their oaths do further allege, find, charge and present:

That the said defendant, JOSEPH GORHAM, was continuously throughout all of the time or times from and after the 1st day of March, 1924, and at all of the times thereafter, and herein mentioned, and particularly at the time or times of the commission and consummation of each and all of the overt acts in this indictment set forth, and up to and including the time of the filing of this indictment, then and there a duly and regularly qualified, appointed and acting sergeant of the police force of the city and county of San Francisco, State of California, then and there acting as such. [18]

XXXIV(b).

And the Grand Jurors of the United States of America within and for the Southern Division of the Northern District of California on their oaths do further allege, find, charge and present.

That the said defendant, Joseph Gorham, as such sergeant of police, was on or about the 1st day of March, 1924, and at all of the times thereafter and herein mentioned, and particularly at the time or times of the commission and consummation of each and all of the overt acts in this indictment set forth, and up to and including the time of the filing of this indictment duly and regularly assigned to and acting in the official capacity of his office as such sergeant of police in the Bush Street

Station, Police District No. 5, in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court.

XXXIV(c).

And the Grand Jurors of the United States of America, within and for the Southern Division of the Northern District of California, on their oaths do further allege, find, charge and present:

That the said defendant, PATRICK KISSANE, was continuously throughout all of the time or times from and after the 1st day of March, 1924, and at all of the times thereafter and herein mentioned, and particularly at the time or times of the commission and consummation of each and all of the overt acts in this indictment set forth, and up to and including the time of the filing of this indictment, then and there a duly and regularly qualified, appointed and acting police officer of the police force of the city and county of San Francisco, State of California, then and there acting as such. [19]

XXXIV(d).

And the Grand Jurors of the United States of America, within and for the Southern Division of the Northern District of California, on their oaths do further allege, find, charge and present:

That the said defendant, Patrick Kissane, as such police officer, was on or about the 1st day of March, 1924, and at all of the times thereafter and herein mentioned, and particularly at the time or times of the commission and consummation of each

and all of the overt acts in this indictment set forth, and up to and including the time of the filing of this indictment, duly and regularly assigned to and acting in the official capacity of his office as such police officer in the Bush Street Station, Police District Number 5, in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court.

XXXV.

And the Grand Jurors of the United States of America, within and for the Southern Division of the Northern District of California, on their oaths do further allege, find, charge and present: THAT

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE and JOSEPH GORHAM,

hereinafter called the defendants, did at and in the city and county of San Francisco, Southern Division of the Northern District of California, and within the jurisdiction of this court, on or about the 1st day of May, 1923, the real and exact date being to the said Grand Jurors unknown, and at all the times [20] thereafter up to and including the date of the filing of this indictment wilfully, unlawfully, feloniously and knowingly conspire, combine, confederate and agree together and with divers other persons whose names are to these Grand Jurors and to this Grand Jury unknown,

to commit the acts made offenses and crimes against the United States of America, that is to say, that the said defendants then and there being did then and there wilfully, unlawfully, feloniously and knowingly conspire, combine, confederate and agree together and with divers other persons whose names are to these Grand Jurors and to this Grand Jury unknown, with the intent to and for the purpose of:

(a) Wilfully, unlawfully, feloniously and knowingly manufacturing, selling, transporting, delivering, furnishing, and possessing intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, in violation of Section 3 of Title II of the act of October 28, 1919, known as the National Prohibition Act;

(b) Wilfully, unlawfully, feloniously and knowingly purchasing, transporting, possessing, furnishing and selling intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, without making any application therefor as required by the said National Prohibition Act or by said regulations and without first or at all obtaining a or any permit from the Commissioner of Internal Revenue so to do, in violation of Section 6 of Title II of the said National Prohibition Act and in violation of said Section 6 of Article III of said Regulations 60; [21]

(c) Wilfully, unlawfully, knowingly and feloniously maintain a common nuisance by keeping for sale and selling intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for beverage purposes and in the building and place, to wit, 1249 Polk Street, in the city and county of San Francisco, in the Southern Division of the Northern District of the State of California, and within the jurisdiction of this court in violation of said Section 21 of said Title II of the said National Prohibition Act;

(d) Wilfully, unlawfully, knowingly and feloniously maintain a common nuisance by keeping for sale and selling intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for beverage purposes and in the building and place, to wit, 2031 Steiner Street, in the city and county of San Francisco, in the Southern Division of the Northern District of the State of California, and within the jurisdiction of this court in violation of said Section 21 of said Title II of the said National Prohibition Act;

(e) Wilfully, unlawfully, knowingly and feloniously maintain a common nuisance by keeping for sale and selling intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for beverage pur-

poses and in the building and place, to wit, 3047 California Street, in the city and county of San Francisco, in the Southern Division of the Northern District of the State of California, and within the jurisdiction of this court in violation of said Section 21 of said Title II of the said National Prohibition Act; [22]

(f) Wilfully, unlawfully, knowingly and feloniously maintain a common nuisance by keeping for sale and selling intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for beverage purposes and in the building and place, to wit, 2922 Sacramento Street, in the city and county of San Francisco, in the Southern Division of the Northern District of the State of California, and within the jurisdiction of this court in violation of said Section 21 of said Title II of the said National Prohibition Act;

(g) Wilfully, unlawfully and knowingly selling intoxicating liquor for beverage purposes, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, without giving a bond as required by the said National Prohibition Act and said Regulations 60;

(h) Wilfully, unlawfully and knowingly possessing for sale, transporting and selling intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for bev-

erage purposes, at 1249 Polk Street, in the city and county of San Francisco, California, without making a permanent or any record thereof, in violation of Section 10 of Title II of the said National Prohibition Act;

(i) Wilfully, unlawfully and knowingly possessing for sale, transporting and selling intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 2031 Steiner Street, in the city and county of San Francisco, California, without making a permanent or any record thereof, in violation of Section 10 of Title II of the said National Prohibition Act; [23]

(j) Wilfully unlawfully and knowingly possessing for sale, transporting and selling intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 3047 California Street, in the city and county of San Francisco, California, without making a permanent or any record thereof, in violation of Section 10 of Title II of the said National Prohibition Act;

(k) Wilfully, unlawfully and knowingly possessing for sale, transporting and selling intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 2922 Sacramento Street, in the city and county of San Francisco, California, without making a permanent or any record thereof, in

violation of Section 10 of Title II of the said National Prohibition Act;

(l) Wilfully, unlawfully and knowingly selling and delivering intoxicating loquor, to wit whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 1249 Polk Street, in the city and county of San Francisco, California, at wholesale without a permit to persons having no permit to purchase or receive said or any intoxicating liquor, in violation of said Section 11 of Title II, of said National Prohibition Act;

(m.) Wilfully, unlawfully and knowingly selling and delivering intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes at 2031 Steiner Street, in the city and county of San Francisco, California, at wholesale without a permit to persons having no permit to purchase or receive said or any intoxicating liquor, in violation of said Section 11 of Title II of said National Prohibition Act; [24]

(n) Wilfully, unlawfully and knowingly selling and delivering intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes at 3047 California Street, in the city and county of San Francisco, California, at wholesale without a permit to persons having no permit to purchase or receive said or any intoxicating liquor, in violation of said

Section 11 of Title II of said National Prohibition Act;

(o) Wilfully, unlawfully and knowingly selling and delivering intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes at 2922 Sacramento Street, in the city and county of San Francisco, California, at wholesale without a permit to persons having no permit to purchase or receive said or any intoxicating liquor, in violation of said Section 11 of Title II of said National Prohibition Act;

(p) Wilfully, unlawfully and knowingly selling at wholesale in packages intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, without attaching to the packages when sold, a label setting forth the kind and quantity of liquor contained therein, by whom manufactured, the date of sale and person to whom sold, in violation of Section 12 of Title II of said National Prohibition Act;

(q) Wilfully, unlawfully and knowingly giving to carriers orders requiring the delivery of packages of intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes and consigning said liquor to persons not the actual *bona fide* consignees, for the purpose of and the [25] order being to obtain said liquor by persons not the actual *bona*

fide consignees in violation of Section 16 of Title II of said National Prohibition Act;

(r) Wilfully, unlawfully and knowingly having and possessing intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, for use in violation of Title II of said National Prohibition Act, to wit, for sale for beverage purposes without having a permit to sell said liquor for beverage purposes and for sale to persons who were required to have a permit to purchase, but who had not and would not have any permit whatever to purchase said or any intoxicating liquor, in violation of said Section 21 of Title II of the National Prohibition Act;

(s) Wilfully, unlawfully and knowingly transporting and delivering intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes under permits to transport to a destination and at a place other than indicated on said permits covering the shipment, in violation of said National Prohibition Act and in violation of Paragraph 10 of said "Modifications of Regulations 60" and in violation of Section 83 of Article XVI of said Regulations 60;

(t) Wilfully, unlawfully, and knowingly selling, furnishing and delivering intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage pur-

poses in quantities of five gallons and more to persons who would be, were and are, required under the said National Prohibition Act and said Regulations 60, to have permits to purchase, Form 1410, without [26] such persons being entitled to procure intoxicating liquor or having a or any permit to purchase any intoxicating liquor;

(u) Wilfully, unlawfully and knowingly dealing in intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, without keeping Record 52 or Supplemental Record 52, or a permanent file as required by said Subdivision (e) of Section 58 of said Article IX of said Regulation 60;

(v) Wilfully, unlawfully and knowingly selling intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 1249 Polk Street, in the city and county of San Francisco, California, in wholesale quantities without affixing to the containers of said liquor labels showing either the name of the manufacturer, kind, quantity in wine gallons and proof contents, name of seller, date of sale or name of purchaser, in violation of Section 12 of Title II of said National Prohibition Act and in violation of Subdivision (f) of Article IX of said Regulations 60;

(w) Wilfully, unlawfully and knowingly selling intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per

centum and more of alcohol by volume and fit for use for beverage purposes, at 2031 Steiner Street, in the city and county of San Francisco, California, in wholesale quantities without affixing to the containers of said liquor labels showing either the name of the manufacturer, kind, quantity in wine gallons and proof contents, name of seller, date of sale or name of purchaser, in violation of Section 12 of Title II of said National Prohibition Act and in violation of Subdivision (f) of Article IX of said Regulations 60; [27]

(x) Wilfully, unlawfully and knowingly selling intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 3047 California Street, in the city and county of San Francisco, California, in wholesale quantities without affixing to the containers of said liquor labels showing either the name of the manufacturer, kind, quantity in wine gallons and proof contents, name of seller, date of sale or name of purchaser, in violation of Section 12 of Title II of said National Prohibition Act and in violation of Subdivision (f) of Article IX of said Regulations;

(y) Wilfully, unlawfully and knowingly selling intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 2922 Sacramento Street, in the city and county of San Francisco, California, in wholesale quantities without affixing

to the containers of said liquor labels showing either the name of the manufacturer, kind, quantity in wine gallons and proof contents, name of seller, date of sale or name of purchaser, in violation of Section 12 of Title II of said National Prohibition Act and in violation of Subdivision (f) of Article IX of said regulations;

(z) Wilfully, unlawfully and knowingly possessing certain intoxicating liquor for sale for beverage purposes, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 1249 Polk Street, in the city and county of San Francisco, California, without a permit therefor;

(aa) Wilfully, unlawfully and knowingly possessing certain intoxicating liquor for sale for beverage purposes, to wit, whiskey, wine, champagne, gin and beer containing one-half [28] of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 2031 Steiner Street, in the city and county of San Francisco, California, without a permit therefor;

(bb) Wilfully, unlawfully and knowingly possessing certain intoxicating liquor for sale for beverage purposes, to wit, whiskey, wine, champagne, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 3047 California Street, in the city and county of San Francisco, California, without a permit therefor;

(cc) Wilfully, unlawfully and knowingly possessing certain intoxicating liquor for sale for beverage purposes, to wit, whiskey, wine, champagne, gin and beer containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at 2922 Sacramento Street, in the city and county of San Francisco, California, without a permit therefor;

(dd) Wilfully, unlawfully and knowingly transporting to, possessing, using and selling intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, at places other than designated in permits in violation of Section 33 of Title II of said National Prohibition Act and in Violation of Section 80 and 80 (a) of Article XV of said Regulations 60;

(ee) Wilfully, unlawfully and knowingly securing permits to purchase and transport intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, and thereunder to purchase said whiskey, wine, champagne, gin and beer, transport and divert the same to a place other than authorized and directed by said permits; in violation of Secs. 80 and 80 (a), Article XV of Regulations 60; [29]

(ff) Wilfully, unlawfully and knowingly transporting and causing to be transported intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more

of alcohol by volume and fit for use for beverage purposes from 2031 Steiner Street, in the city and county of San Francisco, State of California, to 1249 Polk Street in the city and county of San Francisco, State of California, without a permit therefor;

(gg) Wilfully, unlawfully and knowingly transporting and causing to be transported intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes from 3047 California Street, in the city and county of San Francisco, State of California, to 1249 Polk Street, in the city and county of San Francisco, State of California, without a permit therefor;

(hh) Wilfully, unlawfully and knowingly transporting and causing to be transported intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, containing one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes from 2922 Sacramento Street, in the city and county of San Francisco, State of California, to 1249 Polk Street, in the city and county of San Francisco, State of California, without a permit therefor;

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

That the said conspiracy, combination, confederation and agreement between the said defendants and said divers other persons whose names are to

these Grand Jurors and to this Grand Jury unknown, was continuously throughout all the time from and after on or about the 1st day of May, 1923, and at all the times thereafter and herein mentioned, and particularly at the time and times of the commission and consummation of each and all of [30] the overt acts in this indictment set forth and up to and including the time of the filing of this indictment in existence and in course of execution.

AGAINST the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

1.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in this indictment set out and to effect and accomplish the objects thereof, and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, George Hawkins, on or about the 3d day of July, 1923, at 1249 Polk Street, in the city and county of San Francisco, State of California, then and there being, did then and there sell intoxicating liquor, to wit, two (2) drinks of whiskey, containing more than one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, to one S. J. Keveney, without a permit so to do.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

2.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in this indictment [31] set out and to effect and accomplish the objects thereof, and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, Walter Brand, on or about the —— day of September, 1923, at 1249 Polk Street, in the city and county of San Francisco, State of California, then and there being, did then and there sell intoxicating liquor, to wit, two (2) drinks of whiskey, containing more than one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, to one W. E. Bivens, without a permit so to do.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

3.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in

this indictment set out and to effect and accomplish the objects thereof and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, George Birdsall, *alias* George Howard, on or about the —— day of November, 1923, at 1249 Polk Street, in the city and county of San Francisco, State of California, then and there being, did then and there sell intoxicating liquor, to wit, two (2) drinks of whiskey, containing more than one-half of one per centum and more of alcohol by volume and fit for use for beverage purposes, to one Rudolph Herring, without a permit so to do.

AGAINST the peace and dignity of the United [32] States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

4.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in this indictment set out and to effect and accomplish the objects thereof and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, Joseph E. Marron, *alias* Eddie Marron, on or about the 15th day of May, 1924, at 1249 Polk Street, in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, did then and there

wilfully and unlawfully maintain a common nuisance and that the said defendant did then and there wilfully and unlawfully keep for sale at the premises aforesaid certain intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, the exact amount being to these Grand Jurors and to this Grand Jury unknown, and then and there containing one-half of one per centum and more of alcohol by volume, which was then and there fit for use for beverage purposes.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

5.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in this indictment set out and to effect and accomplish the objects thereof and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, George Birdsall, *alias* George Howard, on or about the 15th day of May, 1924, at 1249 Polk [33] Street, in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, did then and there wilfully and unlawfully maintain a common nuisance and that the said defendant did then and there wilfully and unlawfully keep for sale on

the premises aforesaid certain intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, the exact amount being to these Grand Jurors and to this Grand Jury unknown, and then and there containing one-half of one per centum and more of alcohol by volume, which was then and there fit for use for beverage purposes.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

6.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in this indictment set out and to effect and accomplish the objects thereof and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, Charles Mahoney, on or about the 2d day of October, 1924, at 1249 Polk Street, in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, did then and there wilfully and unlawfully maintain a common nuisance and that the said defendant did then and there wilfully and unlawfully keep for sale on the premises aforesaid certain intoxicataing liquor, to wit, whiskey, wine, champagne, gin and beer, the exact amount being to these Grand Jurors and to this Grand Jury un-

known, and then and there containing one-half of one per centum and more of alcohol by volume, which was then and [34] there fit for use for beverage purposes.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

7.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in this indictment set out and to effect and accomplish the objects thereof and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, Patrick Kissane, then and there being a duly and regularly qualified, appointed and acting police officer of the police force in the city and county of San Francisco, California, did, on or about the 17th day of November, 1923, at 1249 Polk Street, in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, receive as such police officer from said defendant George Birdsall, *alias* George Howard, the sum of Five (5.00) Dollars, lawful money of the United States of America.

AGAINST the peace and dignity of the United States of America, and contrary to the form of

the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

8.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in this indictment set out [35] and to effect and accomplish the objects thereof and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, Joseph Gorham, then and there being a duly and regularly qualified, appointed and acting police officer of the police force in the city and county of San Francisco, California, did, on or about the 31st day of March, 1924, at 1249 Polk Street, in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, receive, as such police officer, from said defendant, George Birdsall, *alias* George Howard, the sum of Ninety (90.00) Dollars, lawful money of the United States of America.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

9.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in this indictment set out and to effect and accomplish the objects thereof and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, Joseph E. Marron, *alias* Eddie Marron, did, on or about the 24th day of April, 1923, at 2031 Steiner Street, in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, then and there wilfully and unlawfully possess certain intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, the exact amount being to these Grand Jurors and to this Grand Jury unknown, and then and there containing one-half of one per centum and more of alcohol by volume, which was then and there fit for use for beverage purposes. [36]

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

10.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in this indictment set out and to effect and accomplish the objects thereof and with the intent and for the purpose of effecting and accomplishing the objects

thereof, the said defendant, Joseph E. Marron, *alias* Eddie Marron, did, on or about the 26th day of August, 1924, at 3047 California Street, in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, then and there wilfully and unlawfully possess certain intoxicating liquors, to wit, whiskey, wine, champagne, gin and beer, the exact amount being to these Grand Jurors and to this Grand Jury unknown, and then and there containing one-half of one per centum and more of alcohol by volume, which was then and there fit for use for beverage purposes.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further allege, charge, find and present:

11.

That in pursuance of the said conspiracy, combination, confederation and agreement herein in this indictment set out and to effect and accomplish the objects thereof and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, Joseph E. Marron, *alias* [37] Eddie Marron, did, on or about the 3d day of September, 1924, at 2922 Sacramento Street, in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court,

then and there wilfully and unlawfully possess certain intoxicating liquors, to wit, whiskey, wine champagne, gin and beer, the exact amount being to these Grand Jurors and to this Grand Jury unknown, and then and there containing one-half of one per centum and more of alcohol by volume, which was then and there fit for use for beverage purposes.

AGAINST the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

Dated: October 17, 1924.

STERLING CARR,
United States Attorney.

A true bill.

PERRY EYRE,
Foreman.

[Endorsed]: Presented in Open Court and Ordered Filed Oct. 17, 1924. Walter B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [38]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE, JOSEPH GORHAM,

Defendants.

MOTION TO QUASH INDICTMENT OF JOSEPH E. MARRON, GEORGE BIRDSALL AND CHARLES MAHONEY.

Now comes the defendants Joseph E. Marron, George Birdsall and Charles Mahoney, by their counsel, and move the Court to quash the indictment herein for the following reasons:

I.

That while the Grand Jury that returned the indictment in the above-entitled cause was deliberating on the testimony taken before it in the said cause, there were present in the Grand Jury room persons not members of said Grand Jury. Said persons were not witnesses and were not undergoing examination before said Grand Jury and were not persons authorized to be present in said Grand

Jury room and that the presence of said persons in said Grand Jury room was prejudicial to the rights of defendants herein.

II.

That while the said Grand Jury was expressing opinions upon the charges of the indictment in the above-entitled cause and during their voting thereon [39] there were present in the Grand Jury room Sterling Carr, the United States Attorney for the Northern District of California, and one of the Assistant United States Attorneys for the Northern District of California. That the presence of said United States Attorney and the said Assistant United States Attorney was prejudicial to the rights of the defendants herein.

WHEREFORE, your petitioners pray that the indictment heretofore rendered be quashed.

HUGH L. SMITH,
Attorney for Said Defendants.

[Endorsed]: Filed Nov. 22, 19924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [40]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE, JOSEPH GORHAM,

Defendants.

PETITION TO SUPPRESS EVIDENCE (GEORGE BIRDSALL and CHARLES MAHONEY).

To the Honorable District Court of the United States in and for the Northern District of California.

The petition of George Birdsall and Charles Mahoney respectfully shows:

I.

That Samuel Rutter now is, and was at all the times herein mentioned, the duly qualified and acting prohibition director of the State of California.

II.

That on or about the 2d day of October, 1924, certain federal agents visited the premises known as No. 1249 Polk Street, San Francisco, California;

said premises being an upper flat of a two-story brick building; that at the time of said visit said federal agents were acting upon what purported to be a search-warrant lawfully issued, authorizing the search of said premises for securing evidence of a violation of the National Prohibition Act.

III.

That the ground for the issuance of said search-warrant and the ground upon which the Commissioner determined that there was probable cause for the issuance of [41] said warrant was that in said affidavit attached to said warrant it was alleged that on the 22d day of September, 1924, certain sales of intoxicating liquors had been made upon said premises in violation of the National Prohibition Act; that on said 2d day of October, 1924, the said federal agents thoroughly searched said premises known as No. 1249 Polk Street, San Francisco, California, and seized certain intoxicating liquor therein.

IV.

That on the next day, the 3d day of October, 1924, said federal agents again searched the premises known as No. 1249 Polk Street, San Francisco, California, and at the time of said search said federal agents were acting on what purported to be a search-warrant, lawfully issued, authorizing the search of said premises for the purpose of securing evidence for violation of the National Prohibition Act.

V.

That the purported warrant upon which said

agents were acting on October 3d, 1924, was issued by the United States Commissioner without probable cause for the following reason, to wit:

Said premises having been searched on October 2, 1924, said search being thorough and complete, and no evidence of further violation of the National Prohibition Act subsequent to said search of October 2, 1924, having been offered to said commissioner said commissioner could not determine that grounds existed that would justify the issuance of said warrant.

That at the time of said search of October 3, 1924, certain personal property was seized and carried away by said agents. [42]

VI.

That the search-warrant issued on October 1, 1924, was executed by W. F. Whittier on October 2, 1924, and the search-warrant issued on October 2, 1924, was executed by the said W. F. Whittier on October 3, 1924; that said W. F. Whittier is one and the same person and knew of his own knowledge that the search-warrant of October 1, 1924, had been fully executed and that said premises had been thoroughly and completely searched.

VII.

That the alleged sales enumerated in the affidavit upon which the search-warrant dated October 2, 1924, was issued were prior to the date of the issuance of the search-warrant dated October 1, 1924.

Petitioners submit that if said violations took place as alleged, that by reason of the complete and thorough search of said premises made on October

2, 1924, by virtue of a warrant dated October 1, 1924, that the said agents were precluded from making a search under and by virtue of said search-warrant dated October 2, 1924, and that the search of October 2, 1924, precluded the Government agents from making a search of said premises on October 3, 1924.

WHEREFORE, your petitioners pray that under the decisions heretofore rendered by the above-entitled court all evidence seized under and by virtue of said warrant dated October 2, 1924, should be ordered suppressed.

GEORGE BIRDSALL,
CHAS. MAHONEY,
Petitioners.
HUGH L. SMITH,
Attorney for Petitioners. [43]

State of California,
City and County of San Francisco,—ss.

George Birdsall, being first duly sworn, deposes and says: That he is one of the petitioners named in the foregoing petition; that he has read said petition and knows the contents thereof, that the same is true of his own knowledge except as to matters therein stated on information or belief and as to those matters, he believes it to be true.

GEORGE BIRDSALL.

Subscribed and sworn to before me this 22d day of November, 1924.

[Seal] C. W. CALBREATH,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Nov. 22, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [44]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE, JOSEPH GORHAM,

Defendants.

PETITION FOR RETURN OF PROPERTY AND TO SUPPRESS EVIDENCE (GEORGE BIRDSALL AND CHARLES MAHONEY).

To the Honorable District Court of the United States in and for the Northern District of California.

The petition of George Birdsall and Charles Mahoney respectfully shows:

I.

That Samuel Rutter now is and was at all the times herein mentioned the duly qualified and acting prohibition director of the State of California.

II.

That your petitioner, George Birdsall, is now and at all the times herein mentioned was the owner and occupant of the premises known as 1249 Polk Street, San Francisco, California.

III.

That on the 2d day of October, 1924, Samuel Rutter, as the duly qualified and acting prohibition director for the State of California, through his Agent W. F. Whittier, and other prohibition agents, whose names are unknown to your petitioner, entered the premises known [45] as No. 1249 Polk Street, San Francisco, California, and carried away therefrom certain personal property, including among other things, certain papers, records and books of account which said papers, records and books of account are the private and personal property of your petitioner, George Birdsall. That at the time of said seizure of said personal property said prohibition agents were acting upon what purported to be a search-warrant lawfully issued authorizing the search of said premises for certain specified and described property which did not include the papers, records and account books heretofore described.

IV.

That the said purported search-warrant only authorized the said prohibition agents to search the said premises for the following described property, to wit:

Intoxicating liquor, to wit, alcohol, brandy, wine, whiskey, rum, gin, beer, ale, porter,

sherry wine, port wine, jackass brandy, corn whiskey, wine or pepsin, neuropin, pepsin rennin, fermented grape juice and spirituous, vinous, malt and fermented liquors, liquids and compounds by whatever name called containing one-half of one per centum or more of alcohol and fit for use for beverage purposes, stills, worms, coils, mashes, goosenecks, hydrometers, essences, caramel, coloring materials, boilers.

That the said seizure by the said prohibition agents of that portion of the personal property seized on said 2d day of October, 1924, to wit, said papers, records, and books of account, was unlawful, unreasonable and unwarranted and when said prohibition agents seized said property they became trespassers *ab initio* on said premises of your petitioner, George Birdsall, and therefore the seizure of the personal property authorized to be seized under and by virtue of said purported search-warrant became unlawful. [46]

V.

Petitioner is informed and believes, and therefore alleges that the United States Government proposes to use said personal property as evidence against your petitioners in a cospiracy action now pending.

WHEREFORE, petitioners pray that an order be made directing the return of said property seized on the 2d day of October, 1924, that all matters pertaining thereto and all things or matters

discovered as a result thereof be suppressed as evidence.

_____,
Petitioner.

_____,
Attorney for Petitioner.

State of California,
City and County of San Francisco,—ss.

George Birdsall, being duly sworn, deposes and says: That he is one of the petitioners named in the foregoing petition for return of property and to suppress evidence, that he has read said petition and knows the contents thereof, that the same is true of his own knowledge except as to the matters therein stated on information or belief, and as to those matters, he believes it to be true.

GEORGE BIRDSALL.

Subscribed and sworn to before me this 22d day of November, 1924.

[Seal] C. W. CALBREATH,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Nov. 22, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [47]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE, JOSEPH GORHAM,

Defendants.

PETITION FOR RETURN OF PROPERTY AND TO SUPPRESS EVIDENCE (GEORGE BIRDSALL).

To the Honorable District Court of the United States in and for the Northern District of California.

Petition of George Birdsall respectfully shows:

I.

That Samuel Rutter now is and was at all the times herein mentioned the duly qualified and acting prohibition director of the State of California.

II.

That your petitioner, George Birdsall, is now and at all the times herein mentioned was the owner

and occupant of the premises known as 1249 Polk Street, San Francisco, California.

III.

That on the 2d day of October, 1924, Samuel Rutter, as the duly qualified and acting prohibition director for the State of California, through his agent W. F. Whittier, and other prohibition agents, whose names are unknown to your petitioner, entered the premises known [48] as No. 1249 Polk Street, San Francisco, California, and seized and carried away therefrom certain personal property, to wit, certain papers, records and books of account, which papers, records and account books are the private and personal property of petitioner. That at the time of said seizure of said personal property said prohibition agents were acting upon what purported to be a search-warrant, lawfully issued authorizing the search of said premises for certain specified and described property which did not include the papers, records and account-book heretofore described.

IV.

That the said purported search-warrant only authorized the said prohibition agents to search the said premises for the following described property, to wit:

> Intoxicating liquor, to wit, alcohol, brandy, wine, whiskey, rum, gin, beer, ale, porter, sherry wine, port wine, jackass brandy, corn whiskey, wine of pepsin, neuropin, pepsin rennin, fermented grape juice and spirituous, vinous, malt and fermented liquors, liquids

and compounds by whatever name called containing one-half of one per centum or more of alcohol and fit for use for beverage purposes, stills, worms, coils, mashes, goosenecks, hydrometers, essences, caramel, coloring materials, boilers.

That said search-warrant did not give said agents authority to seize the said personal property herein described; that said seizure was and is unlawful, unreasonable and unwarranted and is and was in direct violation of petitioner's constitutional rights under the Fourth and Fifth Amendments to the Constitution of the United States.

V.

Petitioner is informed and believes, and therefore alleges, that the United States Government proposes to [49] use said personal property as evidence against petitioner in a conspiracy action now pending.

Wherefore, petitioner prays that an order be made directing the return of said property forthwith to him, that all matters pertaining thereto and all things or matters discovered as a result of entries therein contained be excluded as evidence.

GEORGE BIRDSALL,
Petitioner.

HUGH L. SMITH,
Attorney for Petitioner.

State of California,
City and County of San Francisco,—ss.

George Birdsall, being first duly sworn, deposes and says: That he is the petitioner named in and

who makes the foregoing petition; that he has read said petition and knows the contents thereof, that the same is true of his own knowledge except as to matters therein stated on information or belief, and as to those matters, he believes it to be true.

GEORGE BIRDSALL.

Subscribed and sworn to before me this 22d day of November, 1924.

[Seal] C. W. CALBREATH,

Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Nov. 22, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [50]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE, JOSEPH GORHAM,

Defendants.

PLEA IN BAR AND PETITION TO SUPPRESS EVIDENCE (GEORGE BIRDSALL).

Now comes George Birdsall, one of the defendants in the above-entitled cause, and moves the Court to suppress all evidence against said defendant as to that certain overt act designated as paragraph V of overt acts in the indictment on file in said cause for the following reason:

I.

That on the 15th day of May, 1924, at 1249 Polk Street, in the city and county of San Francisco, certain federal prohibition agents entered said premises at 1249 Polk Street, in the city and county of San Francisco, and searched said premises and found therein certain intoxicating liquor, to wit, whiskey, wine, champagne, gin and beer, and thereafter, on the ————, 1924, an information was filed in the Southern Division of the United States District Court for the Northern District of California, Division One, Action No. 15,018, charging your petitioner with the unlawful possession and sale of intoxicating liquor containing more than [51] one-half of one per cent and more of alcohol by volume, and also with unlawfully maintaining a common nuisance upon said premises; that on the 20th day of May, 1924, your petitioner, George Birdsall, *alias* George Howard, entered a general plea of guilty to the charges contained in said information. Thereupon a fine of five hundred dollars was imposed, or in default of payment of said fine

of five hundred dollars that the said George Birdsall, *alias* George Howard, be imprisoned in the county jail, city and county of San Francisco, State of California, until said fine was satisfied, said term of imprisonment not to extend beyond the period of five months. That on or about the 23d day of May, 1924, your said petitioner, George Birdsall, *alias* George Howard, fully satisfied said judgment by paying said fine of five hundred dollars.

II.

That the matters and things set forth in paragraph V of overt acts in said indictment are identical with the matters and things set forth in the information filed on ——— to which your said petitioner has heretofore pleaded guilty and paid the penalty imposed, thereby fully satisfying judgment as rendered. That by reason thereof, petitioner respectfully submits that he has been once in jeopardy as to the matters and things set forth in said paragraph V of overt acts in said indictment.

WHEREFORE, petitioner prays that an order be made directing the exclusion as evidence of all testimony pertaining to the matters and things specified in paragraph V of overt acts in said indictment and for such other orders as may be meet and just in the premises.

GEORGE BIRDSALL,
Petitioner.
SMITH & JACOBSON,
HUGH L. SMITH,
Attorneys for Petitioner. [52]

State of California,
City and County of San Francisco,—ss.

George Birdsall, being first duly sworn, deposes and says: That he is the petitioner named in the foregoing plea in bar and petition to suppress evidence; that he has read said plea in bar and petition to suppress evidence and knows the contents thereof, that the same is true of his own knowledge except as to the matters therein stated on information or belief, and as to those matters, he believes it to be true.

GEORGE BIRDSALL.

Subscribed and sworn to before me this 22d day of November, 1924.

[Seal] C. W. CALBREATH,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Nov. 22, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [53]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE, JOSEPH GORHAM,

Defendants.

PLEA IN BAR AND PETITION TO SUPPRESS EVIDENCE (JOSEPH E. MARRON).

Now comes Joseph E. Marron, one of the defendants in the above-entitled cause, and moves the Court to suppress all evidence against said defendant as to that certain overt act designated as paragraph IX of overt acts in the indictment on file in said cause for the following reason:

I.

That on the 24th day of April, 1923, at 2031 Steiner Street in the city and county of San Francisco, certain federal prohibition agents entered said premises at 2031 Steiner Street, in the city and county of San Francisco, and searched said premises and found therein certain intoxicating liquors,

to wit, whiskey, wine, champagne, gin and beer, and thereafter, on the 26th day of April, 1923, an information was filed in the Southern Division of the United States District Court for the Northern District of California, Division One, Action No. 13,362, charging your petitioner with the unlawful possession and sale of intoxicating liquor containing more than one-half [54] of one per cent and more of alcohol by volume, and also with unlawfully maintaining a common nuisance upon said premises; that on the 4th day of April, 1924, your petitioner, Joseph E. Marron, entered a general plea of guilty to the charges contained in said information. Thereupon a fine of four hundred dollars was imposed, or in default of payment of said fine of four hundred dollars that the said Joseph E. Marron be imprisoned in the county jail, city and county of San Francisco, State of California, until said fine was satisfied, said term of imprisonment not to extend beyond the period of four months. That on or about the 4th day of April, 1924, your said petitioner, Joseph E. Marron, fully satisfied said judgment by paying said fine of four hundred dollars.

II.

That the matters and things set forth in paragraph IX of overt acts in said indictment are identical with the matters and things set forth in the information filed on April 26, 1923, to which your said petitioner has heretofore pleaded guilty and paid the penalty imposed, thereby fully satisfying judgment as rendered. That by reason thereof,

petitioner respectfully submits that he has been once in jeopardy as to the matters and things set forth in said paragraph IX of overt acts in said indictment.

WHEREFORE, petitioner prays that an order be made directing the exclusion as evidence of all testimony pertaining to the matters and things specified in paragraph IX of overt acts in said indictment and for such other orders as may be meet and just in the premises.

JOSEPH E. MARRON,
Petitioner.

HUGH L. SMITH,
Attorney for Petitioner. [55]

State of California,
City and County of San Francisco,—ss.

Joseph E. Marron, being first duly sworn, deposes and says: That he is the petitioner named in the foregoing plea in bar and petition to suppress evidence; that he has read said plea in bar and petition to suppress evidence and knows the contents thereof, that the same is true of his own knowledge except as to the matters therein stated on information or belief, and as to those matters, he believes it to be true.

JOSEPH E. MARRON.

Subscribed and sworn to before me this 24th day of November, 1924.

[Seal] JOHN WISNOM,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Nov. 29, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [56]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. ——.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE, JOSEPH GORHAM,

Defendants.

PETITION TO SUPPRESS EVIDENCE (JOSEPH E. MARRON).

To the Honorable District Court of the United States, in and for the Northern District of California.

The petition of Joseph E. Marron respectfully shows:

I.

That Samuel Rutter now is and was at all the times herein mentioned the duly qualified and acting prohibition director of the State of California.

II.

That your petitioner, Joseph E. Marron, is now and at all the times herein mentioned was the lessee of a portion of those certain premises known and designated as 3047 California Street, in the city and county of San Francisco, State of California, which said premises was at all times herein mentioned and is now a private dwelling, and was occupied as such.

III.

That on or about the 26th day of August, 1924, certain police officers attached to the police department of the city and county of San Francisco, appeared at the premises known and designated as 3047 California Street, described in the preceding paragraph, and informed the occupant thereof that they desired to [57] make an inspection of said premises for the purpose of ascertaining the sanitary conditions therein. Upon said representation the occupant thereof, while not actually offering any physical resistance, unwillingly permitted said officers to enter for said purpose. That said entry by said officers under the pretext of making a sanitary inspection was merely a ruse; that no sanitary inspection was made; that thereafter said officers left said premises and later returned with certain federal prohibition officers acting under Samuel Rutter, the duly qualified and acting prohibition director of the State of California; that said agents forcibly, and without the consent of petitioner, and against his will, and without his knowledge, entered said premises and seized and

carried away therefrom certain personal property; that said entry was obtained by the breaking of the locks in the garage doors of said premises by said agents; that at the time of the forcible entry, as aforesaid, said agents, nor any of them, did not have a search-warrant to search said premises, or any portion thereof, nor did they exhibit any papers or writing purporting to be a search-warrant authorizing them to search said premises.

IV.

That at all the times herein mentioned and immediately preceding the entry, as aforesaid, no offense against the laws of the United States of America or the State of California had been committed in the presence of said agents or of said police officers. Petitioner respectfully submits that said search was in violation of the constitutional rights of petitioner under the Fourth and Fifth Amendments to the Constitution of the United States of America in that the said agents did not have a search-warrant authorizing them to search said premises or to seize said personal property.

V.

That said seizure, made as aforesaid, was unlawful, unwarranted, unreasonable, and in violation of the constitutional rights of petitioner. [58]

VI.

Petitioner is informed and believes and therefore alleges that the United States Government proposes to use said personal property heretofore seized as evidence against your petitioner in an action now pending in the above-entitled court, Divi-

sion One thereof, No. 15,708, and will do so unless the same is ordered suppressed by Court order.

WHEREFORE, petitioner prays that an order be entered excluding as evidence all property seized, as hereinbefore set out, and all matters and things pertaining thereto, which the United States Government proposes to use against your petitioner.

JOSEPH E. MARRON.

State of California,
City and County of San Francisco,—ss.

Joseph E. Marron, being first duly sworn, deposes and says: That he is the petitioner named in and who makes the foregoing petition; that he has read said petition and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on information or belief, and as to those matters, he believes it to be true.

JOSEPH E. MARRON.

Subscribed and sworn to before me this 24th day of November, 1924.

[Seal] JOHN WISNAM,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Nov. 29, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [59]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. ——.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE, JOSEPH GORHAM,

Defendants.

PETITION TO SUPPRESS EVIDENCE (JOSEPH E. MARRON).

To the Honorable District Court of the United States, in and for the Northern District of California.

The petition of Joseph E. Marron respectfully shows:

I.

That Samuel Rutter now is and was at all the times herein mentioned the duly qualified and acting prohibition director of the State of California.

II.

That your petitioner, Joseph E. Marron, is now and at all the times herein mentioned was the

lessee of a portion of those certain premises known and designated as 2922 Sacramento Street, in the city and county of San Francisco, State of California, which said premises was at all times herein mentioned and is now a private dwelling, and was occupied as such.

III.

That on or about the 3d day of September, 1924, certain police officers attached to the police department of the city and county of San Francisco, appeared at the premises known and designated as 2922 Sacramento Street, described in the preceding paragraph, and informed the occupant thereof that they desired to [60] make an inspection of said premises for the purpose of ascertaining the sanitary conditions therein. Upon said representation the occupant thereof, while not actually offering any physical resistance, unwillingly permitted said officers to enter for said purpose. That said entry by said officers under the pretext of making a sanitary inspection was merely a ruse. That no sanitary inspection was made. That thereafter said officers left said premises and later returned with certain federal prohibition officers acting under Samuel Rutter, the duly qualified and acting prohibition director of the State of California. That said agents forcibly, and without the consent of petitioner, and against his will, and without his knowledge, entered said premises and seized and carried away therefrom certain personal property. That at the time of the forcible entry, as aforesaid, said agents, nor any of them, did not

have a search-warrant to search said premises, or any portion thereof, nor did they exhibit any papers or writing purporting to be a search-warrant authorizing them to search said premises.

IV.

That at all the times herein mentioned and immediately preceding the entry, as aforesaid, no offense against the laws of the United States of America or the State of California had been committed in the presence of said agents or of said police officers. Petitioner respectfully submits that said search was in violation of the constitutional rights of petitioner under the Fourth and Fifth Amendments to the Constitution of the United States of America in that the said agents did not have a search-warrant authorizing them to search said premises or to seize said personal property.

V.

That said seizure, made as aforesaid, was unlawful, unwarranted, unreasonable, and in violation of the constitutional rights of petitioner. [61]

VI.

Petitioner is informed and believes and therefore alleges that the United States Government proposes to use said personal property heretofore seized as evidence against your petitioner in an action now pending in the above-entitled court, Division One thereof, No. 15,708, and will do so unless the same is ordered suppressed by Court order.

WHEREFORE, petitioner prays that an order be entered excluding as evidence all property seized,

as hereinbefore set out, and all matters and things pertaining thereto, which the United States Government proposes to use against your petitioner.

JOSEPH E. MARRON.

State of California,
City and County of San Francisco,—ss.

Joseph E. Marron, being first duly sworn, deposes and says: That he is the petitioner named in and who makes the foregoing petition; that he has read said petition and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on information or belief, and as to those matters, he believes it to be true.

JOSEPH E. MARRON.

Subscribed and sworn to before me this 24th day of November, 1924.

[Seal] JOHN WISNOM,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Nov. 29, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [62]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS et al.,

Defendants.

AFFIDAVIT OF D. W. RINCKEL.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

D. W. Rinckel, being first duly sworn, deposes and says: That he is, and at all of the times herein mentioned was a federal prohibition agent and acting as such under the direction of Samuel Rutter, federal prohibition director of the State of California;

That affiant is informed and believes and therefore asserts as a fact that Joseph E. Marron, one of the defendants in this case, does not live at 2922 Sacramento Street, San Francisco, but that the residence part of said building is occupied and owned by one Herman Baum and that said Joseph E. Marron leased only the basement on said premises in which was stored the liquor seized on said date hereinafter mentioned.

That on the 3d day of September, 1924, in response to a telephone communication from the police officers of the police department of the city and county of San Francisco, he, together with other agents, went to 2922 Sacramento Street, San Francisco, and met said police [63] officers of said police force at said place; that at said time and at said place said police officers informed affiant and the federal agents accompanying him that there was a quantity of liquor located at said place and that they desired to turn over said intoxicating liquor to the federal officers, and thereupon said police officers did take affiant and said agents to where said liquor was, and affiant and said agents did thereupon take possession of said intoxicating liquor from said police officers.

D. W. RINCKEL.

Subscribed and sworn to before me this 6th day of December, 1924.

[Seal] A. C. AURICH,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Dec. 6, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [64]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. ——.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE, JOSEPH GORHAM,

Defendants.

AFFIDAVIT OF W. F. WHITTIER.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

W. F. Whittier, being first duly sworn, deposes and says: That he is, and at all of the times herein mentioned was a federal prohibition agent and acting as such under the direction of Samuel F. Rutter, federal prohibition director of the State of California;

That he was one of the prohibition agents which executed a search-warrant on 1249 Polk Street, San Francisco, California, on the 2d day of October, 1924; that the only paper, record or book

of account seized in said raid at said place at said time was a book of account and the entire contents of which referred to and was in connection with the illegal possession and sale of intoxicating liquor at said place, and which said book of account was taken from among bottles of intoxicating liquor seized from said place at said time; also certain bills and receipts pertaining to the [65] maintaining of said place as a common nuisance by the illegal possession and sale of intoxicating liquors at said place.

W. F. WHITTIER.

Subscribed and sworn to before me this 5th day of December, 1924.

[Seal] FRANCIS KRULL,

U. S. Commissioner Northern District of California at S. F.

[Endorsed]: Filed December 6, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [66]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,488.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS et al.,

Defendants.

AFFIDAVIT OF A. R. SHURTLEFF.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

A. R. Shurtleff, being first duly sworn, deposes and says: That he is, and at all of the times herein mentioned was a federal prohibition agent and acting as such under the direction of Samuel F. Rutter, federal prohibition director of the State of California.

That affiant is informed and believes and therefore asserts as a fact that Joseph E. Marron, one of the defendants in this case, does not live at 3047 California Street, but that the residence part of said building is occupied and owned by one W. F. Curran and that said Joseph E. Marron leased only a garage on said premises in which was stored the liquor seized on said date hereinafter mentioned.

That on the 26th day of August, 1924, in response to a telephone communication from the police officers of the police department of the city and county of San Francisco, he, together with other agents, went to 3047 California Street, San Francisco, and met said police officers of said police force at said place; that at said time and at said [67] place said police officers informed affiant and the federal agents accompanying him that there was a quantity of liquor located at said place and that they desired to turn over said intoxicating liquor to the

federal officers, and thereupon said police officers did take affiant and said agents to where said liquor was, and affiant and said agents did thereupon take possession of said intoxicating liquor from said police officers.

A. R. SHURTLEFF.

Subscribed and sworn to before me this 6th day of December, 1924.

[Seal] C. W. CALBREATH,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed December 6th, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [68]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,488.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE HAWKINS et al.,
Defendants.

AFFIDAVIT OF PERRY EYRE.

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Perry Eyre, being first duly sworn, deposes and

says: That during all of the time from the second Monday in July, 1924, to and including the time when an indictment was returned in the above-entitled action, he was the foreman of the Federal Grand Jury for the above-entitled District; that on each and every occasion when the Grand Jury convened for the purpose of taking testimony, deliberating on or voting upon the indictment in the above-entitled case, he was present in the Grand Jury room; that during the time when testimony was being presented to said Grand Jury on said above-mentioned indictment there were only present the witness being examined, Special Assistant United States Attorney Kenneth C. Gillis, and during a part of said times United States Attorney Sterling Carr; that on none of said times was there present in said Grand Jury room while said testimony was being taken any other person except those mentioned above; that during none of the time while said Grand Jury was deliberating on said case or while said Grand [69] Jury and said Grand Jurors were considering the charges upon said indictment or expressing opinions upon the same was there any other person in said Grand Jury room except duly selected, qualified and acting members of said Grand Jury.

PERRY EYRE.

Subscribed and sworn to before me this 5th day of December, 1924.

[Seal] C. W. CALBREATH,

Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed December 6, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [70]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the court-room thereof, in the city and county of San Francisco, on Saturday, the sixth day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable JOHN S. PARTRIDGE, District Judge.

No. 15,708.

UNITED STATES OF AMERICA

vs.

GEO. HAWKINS et al.

MINUTES OF COURT—DECEMBER 6, 1924—ORDER DENYING MOTIONS TO EXCLUDE EVIDENCE, etc.

This case came on regularly for hearing on motion to exclude evidence, motion for return of personal property, plea in abatement and in bar. After hearing Hugh Smith, Esq., attorney for defendants, and K. C. Gillis, Esq., Asst. U. S. Atty., ordered motions to exclude, etc., denied (to which order Mr. Smith entered exception), EXCEPT as to George Birdsall and Charles Mahoney and as to their motions Court ordered same continued to Dec. 13, 1924, for hearing.

Mr. Smith made a motion to quash indictment. After hearing attorneys, ordered motion denied.

Page 310, Vol. 64. [71]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS, WALTER BRAND, JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE, JOSEPH GORHAM,

Defendants.

AMENDED PETITION TO SUPPRESS EVIDENCE (GEORGE BIRDSALL AND CHARLES MAHONEY.)

To the Honorable District Court of the United States in and for the Northern District of California,

The petition of George Birdsall and Charles Mahoney respectfully shows:

I.

That Samuel Rutter now is, and was at all the times herein mentioned, the duly qualified and acting prohibition director of the State of California.

II.

That your petitioner, George Birdsall, is now and at all the times herein mentioned was the owner and occupant of the premises known as 1249 Polk Street, San Francisco, California.

III.

That on or about the 2d day of October, 1924, certain federal agents visited the premises known as 1249 Polk Street, San Francisco, California; said premises being an upper flat of a two-story brick building; that at the time of said [72] visit said federal agents were acting upon what purported to be a search-warrant lawfully issued, authorizing the search of said premises for securing evidence of a violation of the National Prohibition Act.

IV.

That the ground for the issuance of said search-warrant and the ground upon which the Commissioner determined that there was probable cause for the issuance of said warrant was that in said affidavit attached to said warrant it was alleged that on the 22d day of September, 1924, certain sales of intoxicating liquors had been made upon said premises in violation of the National Prohibition Act; that on said 2d day of October, 1924, the said federal agents thoroughly searched said premises known as 1249 Polk Street, San Francisco, California, and seized certain intoxicating liquor therein.

V.

That on the next day, the 3d day of October, 1924, said federal agents again searched the prem-

ises known as No. 1249 Polk Street, San Francisco, California, and at the time of said search said federal agents were acting upon what purported to be a search-warrant, lawfully issued, authorizing the search of said premises for the purpose of securing evidence for violation of the National Prohibition Act.

VI.

That the purported warrant upon which said agents were acting on October 3d, 1924, was issued by a United States Commissioner without probable cause for the following reason, to wit: [73]

Said premises having been searched on October 2, 1924, said search being thorough and complete, and no evidence of further violation of the National Prohibition Act subsequent to said search of October 2, 1924, having been offered to said Commissioner, said commissioner could not determine that grounds existed that would justify the issuance of said warrant.

That at the time of said search of October 3, 1924, certain personal property was seized and carried away by said agents.

VII.

That the search-warrant issued on October 1, 1924, was executed by W. F. Whittier on October 2, 1924, and the search-warrant issued on October 2, 1924, was executed by the said W. F. Whittier on October 3, 1924; that said W. F. Whittier is one and the same person and knew of his own knowledge that the search-warrant of October 1, 1924, had been

fully executed and that said premises had been thoroughly and completely searched.

VIII.

That the alleged sales enumerated in the affidavit upon which the search-warrant dated October 2, 1924, was issued were prior to the date of the issuance of the search-warrant dated October 1, 1924.

Petitioners submit that if said violations took place as alleged, that by reason of the complete and thorough search of said premises made on October 2, 1924, by virtue of a warrant dated October 1, 1924, that the said agents were precluded from making a search under and by virtue of [74] said search-warrant dated October 2, 1924, and that the search of October 2, 1924, precluded the Government agents from making a search of said premises on October 3, 1924.

WHEREFORE, your petitioners pray that under the decisions heretofore rendered by the above-entitled court all evidence seized under and by virtue of said warrant dated October 2, 1924, should be ordered suppressed.

GEORGE L. BIRDSALL,
Petitioner. [75]

State of California,
City and County of San Francisco,—ss.

George Birdsall, being duly sworn, deposes and says: That he is one of the petitioners named in the foregoing amended petition to suppress evidence; that he has read said amended petition and knows the contents thereof, that the same is true

of his own knowledge except as to the matters therein stated on information or belief, and as to those matters, he believes it to be true.

GEORGE L. BIRDSALL.

Subscribed and sworn to before me this 27 day of December, 1924.

[Seal] C. M. TAYLOR,

Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Dec. 27, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [76]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA

vs.

WALTER BRAND et al.

(VERDICT.)

We, the Jury, find as to the defendants at the bar as follows:

Walter Brand—Not Guilty.
Joseph E. Marron—Guilty.
George Birdsall—Guilty.
Charles Mahoney—Guilty, with a recommendation that leniency be shown and a fine only be imposed.
Patrick Kissane—Guilty.
Joseph Gorham—Guilty.

ALFRED P. FISHER,
Foreman.

[Endorsed]: Filed Jan. 14, 1925, at 4 o'clock and 50 minutes P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [77]

In the Southern Division of the District Court of the United States for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSEPH GORHAM et al.,
Defendants.

MOTION FOR NEW TRIAL OF DEFENDANT JOSEPH GORHAM.

Now comes the defendant, Joseph Gorham, and moves the Court that the verdict herein rendered be vacated and a new trial be granted said defendant for the following reasons:

1. That the verdict was contrary to the evidence.
2. That the verdict was contrary to the weight of the evidence.
3. That the verdict was contrary to the law as given to the jury by the Court.
4. That the Court erred in refusing instruction No. 1 requested by defendant, Gorham.
5. That the Court erred in admitting evidence contrary to the law.
6. That newly discovered and material evidence has come to light since the trial.
7. Errors of law occurring at the trial, and which errors of law defendant Gorham regularly and duly excepted to.
8. That new evidence material to defendant Gorham has been discovered, which he could not with due and reasonable diligence, produce at the trial. [78]

WHEREFORE, defendant Gorham respectfully prays this Honorable Court that the verdict herein rendered be set aside and that a new trial be allowed.

WILLIAM A. KELLY,
Attorney for Defendant, Joseph Gorham.

[Endorsed]: Filed Jan. 20, 1925, *nunc pro tunc* as of Jan. 14, 1925. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [79]

In the Southern Division of the District Court of the United States for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH GORHAM et al.,

Defendants.

AFFIDAVIT OF DEFENDANT JOSEPH GORHAM IN SUPPORT OF MOTION FOR A NEW TRIAL.

State of California,
City and County of San Francisco,—ss.

Joseph Gorham, being first duly sworn, deposes and says:

My name is Joseph Gorham. I am one of the defendants in the above-entitled proceeding. I am and have been for a number of years past, a sergeant of police in the police department of the city and county of San Francisco, State of California. I was off duty in said police department the first seventeen days of September, 1924. I reported back to duty in said department on the 18th day

of September, 1924. Said seventeen days comprehend my regular days off and my vacation period. My vacation period was spent at Richardson Springs, California, Marysville, California, and Sacramento, California.

I was not at any time during the month of September, 1924, in the premises referred to throughout the testimony in this case, 1249 Polk Street, San Francisco, California. I do not know the witness Latham, who testified during the last few moments of the trial of this case. I never saw him before he appeared as a witness in this [80] Court. I was not in his presence at or about 11 or 11:30 o'clock on any day in the latter part of September, 1924, at said 1249 Polk Street, or at any other time of any day in September, 1924. I was not in the kitchen of said 1249 Polk Street on any day in the latter part of September, 1924, at or about 11 or 11:30 of such day or on any day at any time of any day of September, 1924, nor was I ever in said kitchen at any time in my life. I did not witness the transaction testified to by said Latham, to wit: the pouring of liquor by said Latham into a glass, the drinking of same by said Latham and the payment by said Latham to one Mahoney, of money therefor.

I was on duty in said police department on every day in September, 1924, from the 18th day thereof, to and including the last day thereof. I was in the various police courts of the city and county of San Francisco, State of California, on all of the days of September, 1924, commencing with the 18th

day thereof, down to and including the last day thereof in connection with the prosecution of cases of defendants arrested by myself and posse, to wit: Officers Maquire and Ward, excepting on the 21st and 28th days of September, 1924, which days were Sundays. I arrived at said police courts on each of said days at about 10:30 A. M. thereof, and did not leave the same on any of said days until at least 12 M. of said days and often at a later hour.

Following are the records of arrests made by myself and said posse and the dates whereon in connection therewith I was as aforesaid in said police courts of said city and county of San Francisco:

"Sept. 18th. Jean Clark, 635 Larkin Street, Keeping a House of Ill Fame and Vagrancy.

Ester Sullivan, #635 Larkin Street, [81] Inmate of a House of Ill Fame.

Benjamin Burke, John Nelson, Fred Brown and Thomas O'Hara, visitors to a House of Ill Fame. Police Court Dept. #1—Judge O'Brien.

Jacquelini Brown (Colored), Soliciting Prostitution and Vagrancy. Geary and Webster Streets. Continued until September 25th, 1924. Police Court Dept. #1—Judge O'Brien.

Sept. 19th: Edna Petroza, #213 Elm Avenue, Keeping a House of Ill Fame. Jess Garcia, #213 Elm Avenue, Violation the Pimping Law and Section 476 Penal Code.

William Strong, #213 Elm Avenue, Violation the Pimping Law and contributing to the de-

linquency of a Minor. Police Court Dept. #1—Judge O'Brien.

20th: Margaret Norton, 1548 Market Street, Keeping a House of Ill Fame. Inmate of a House of Ill Fame and Vagrancy.

Helen Hayes, 1548 Market Street, Inmate of a House of Ill Fame and Vagrancy.

John Brown and Joseph McKay. Visitors to a House of Ill Fame. Police Court Dept. #1—Judge O'Brien.

22d: Helen Hilton, 617 Ellis Street. Keeping a House of Ill Fame—Soliciting Prostitution and Vagrancy. Police Court Dept. #1—Judge O'Brien.

May Morris, Golden Gate Avenue and Hyde Street, Soliciting Prostitution and Vagrancy. Police Court Dept. #1—Judge O'Brien.

22d: Harold Cabot, 1051 Post Street. Violating the State Prohibition Act. (Sale and Possession.) Police Court Dept. #2—Judge Lazarus.

Alfred Bishop, 1724 Fillmore Street, Keeping a Gambling Place, Claude Berton, Jack Allen, Herman Offenbach, Robert Zemon, Harold Sydelman, Harry Goldman, George Bates, Ed. Miller, William Perry, Raymond Meehan, Frank White, Joseph Brown, Arthur Hyatt, Frank Deliss, Harvey Burton, Andrew J. Whitmane and Antone Sanders, Visitors to a Gambling Place. Police Court Dept. #2—Judge Lazarus.

23d: Ethel Davis, 602 Golden Gate Avenue, Keeping a House of Ill Fame. Soliciting Prostitu-

tion and Vagrancy. Police Court Dept. #1—Judge O'Brien.

Ethel Waldon, 1708 Webster Street. Keeping a House of Ill Fame. Soliciting Prostitution and Vagrancy. Police Court Dept. #1—Judge O'Brien.

24th: Margaret Norton, 1548 Market Street, Keeping a House of Ill Fame, Soliciting Prostitution and Vagrancy. Police Court Dept. #1—Judge O'Brien.

24th: Marie Devon, 381 Turk Street. Keeping a House of Ill Fame. Soliciting Prostitution and Vagrancy. Police Court Dept. #1—Judge O'Brien. [82]

25th: Jacqueline Brown (Colored), Geary and Webster Streets, Soliciting Prostitution and Vagrancy. Continued from Sept. 18th, 1924. Police Court Dept. #1—Judge O'Brien.

25th: Ethel Waldon, 1708 Webster Street. Keeping a House of Ill Fame. Soliciting Prostitution and Vagrancy. Continued from September 23d, 1924. Police Court Dept. #1—Judge O'Brien.

26th: Frances Lee, Ellis and Webster Streets, Soliciting Prostitution and Vagrancy. Police Court Dept. #1—Judge O'Brien.

27th: Helen Williams, 802A McAllister Street. Keeping a House of Ill Fame. Soliciting Prostitution and Vagrancy. Police Court Dept. #1—Judge O'Brien.

27th: Andree Miller, 1764 Geary Street. Keeping a House of Ill Fame, Soliciting Prostitution

and Vagrancy. Rudolph Durant, Visitor to a House of Ill Fame. Police Court Dept. #1—Judge O'Brien.

29th: Eva Stewart, 525 Leavenworth Street. Soliciting Prostitution and Vagrancy. Herman King, Visiting a House of Ill Fame. Police Court, Dept. #1—Judge O'Brien.

29th: Henry Shimizu, Phillip Moore and D. Ispirito, 1623 Buchanan Street, Keepers of a Gambling Place. Tifoles Gonzales, Jimmie Inajaki, Peter Miner, Tom Yama, M. Gortez, Yama Nihi, Exlogio Ramez, Charles Wong, Frank Chan, Sam Toda, Yosiho Yoshido, Henry Maria, Frank Toda, M. Igachi, H. Haya, Pon Ciano, Romelo Castro, Frank Rapado, and I. Mori, Visitors to a Gambling Place. Bill Lomioc, Pedro Lopes, D. Shipizu, Ed. Agawain, N. Bon. Police Court Dept. #4—Judge Jacks.

29th: Thomas Gillen and Harry Levos, *alias* Henry Lewis, 1137 Fillmore Street. Violating State Poison Law. Rebooked and tried on September 30th, 1924. Police Court Dept. #4—Judge Jacks.

Last two cases on September 29th, 1924, continued to September 30th, 1294, upon which last-mentioned date they were disposed of.

On said Sundays, to wit: September 21st and September 28th, 1924, I did not report to the Bush Street police station, the station to which I was in said month of September, assigned, until about 2 P. M. of said days.

I reside at 1132 Masonic Avenue, in the city and county of San Francisco, State of California, and on said Sundays remained in my home all morning until about 12 M. of said Sundays, whereupon I attended religious services [83] and after said religious services, returned to my home, remained there for a brief period and then went to said police station, arriving there as aforesaid at about 2 P. M.

Said Latham was the last witness called in this case and called by the Government in rebuttal. I was taken by surprise at the testimony given by him in alleged rebuttal and the evidence of the cases I have hereinbefore set forth and my connection therewith, is material to me, and I could not with reasonable diligence have discovered it and produced it at the trial, because of the manner in which and the time at which Latham testified and the subject matter to which he testified. Said Latham did not fix the date in September, 1924, when he claims to have seen me at said 1249 Polk Street, any more definitely than to say that it was in the latter part of September, and for this additional reason, said evidence of my movements as hereinbefore set forth during the whole month of September, 1924, was and is material to me.

JOSEPH GORHAM.

Subscribed and sworn to before me this 19th day of January, 1925.

[Seal] R. H. JONES,

Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jan. 20, 1925, *nunc pro tunc* as of Jan. 14 1925. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [84]

In the District Court of the United States, for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS et al.,

Defendants.

MOTION FOR NEW TRIAL FOR DEFENDANTS JOSEPH E. MARRON, *alias* EDDIE MARRON, AND GEORGE BIRDSALL, *alias* GEORGE HOWARD.

Now come the defendants Joseph E. Marron and George Birdsall and move the Court that the verdict herein rendered be vacated and a new trial heard for the following reasons:

1. That the verdict is contrary to the evidence.
2. That the verdict is contrary to the weight of the evidence.
3. That the verdict is contrary to the law as given to the jury by the Court.
4. That the Court erred in refusing defendants Joseph E. Marron and George Birdsall special in-

structions, Nos. 1, 3, 12, 16, 17, 18, 23, 24, 26, 27, 30, 31 and 36.

5. That the Court erred insomuch of its general charge as is left to the jury to determine whether or not the defendants here, or either, or any of them, were the parties to the, or any, conspiracy as charged in the indictment.

6. That the Court erred in admitting evidence contrary to law.

7. That new and material facts have come to light since the trial.

8. That other errors at law appeared upon the trial, prejudicial to defendants. [85]

9. That errors at law occurred during the trial of the case in admitting evidence prior to June, 1923, and subsequent to October 3, 1924, which were duly excepted to by the defendants.

10. Errors of law occurring at the trial and excepted to by the defendants.

11. Further, on the ground of newly discovered evidence.

HUGH L. SMITH,
Attorney for Defendant Joseph E. Marron.

HUGH L. SMITH,
CHAS. J. WISEMAN,
Attorneys for George Birdsall.

Receipt of a copy of the within motion for new trial is hereby admitted this 14th day of January, 1924.

STERLING CARR,
U. S. Attorney.
KENNETH C. GILLIS,
Asst. U. S. Attorney.

[Endorsed]: Filed Jan. 20, 1925, *nunc pro tunc* as of Jan. 14, 1925. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [86]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,708—Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PATRICK KISSANE et al.,

Defendants.

MOTION FOR A NEW TRIAL (PATRICK KISSANE).

Now comes Patrick Kissane, one of the defendants in the above-entitled cause, and by Jos. L. Taaffe, Esq., his attorney, moves the Court to set aside the verdict rendered herein and to grant a new trial of said cause and for reasons therefor, shows to the Court the following:

I.

That the verdict in said cause is contrary to law.

II.

That the verdict in said cause was not supported by the evidence in the case.

III.

That the evidence in said cause is insufficient to justify said verdict.

IV.

That the Court erred upon the trial of said cause in deciding questions of law arising during the course of the trial, which errors were duly excepted to.

V.

That the Court improperly instructed the jury to the defendant's prejudice.

Dated at San Francisco, California, this 14th day of January, 1925.

PATRICK KISSANE,
Defendant.
JOS. L. TAAFFE,
Attorney for Defendant. [87]

Dated at San Francisco, California, this 14th day of January, 1925.

PATRICK KISSANE,
Defendant.
JOS. L. TAAFFE,
Attorney for Defendant.

[Endorsed]: Filed Jan. 20, 1925, *nunc pro tunc* as of Jan. 14, 1925. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [88]

In the District Court of the United States, for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE HAWKINS et al.,
Defendants.

MOTION IN ARREST OF JUDGMENT (JOSEPH E. MARRON AND GEORGE BIRDSALL).

Now comes the defendants Joseph E. Marron and George Birdsall in the above-entitled action and against whom a verdict of guilty was rendered on the 14th day of January, 1925, on the indictment filed herein, and move the Court to arrest the judgment against said defendants on said indictment and hold for naught the verdict of guilty rendered against them for the following reasons:

1. That said indictment does not charge any offense against the laws of the United States nor does it charge said defendants with the doing of anything, the doing of which is forbidden by the laws of the United States.

2. That said indictment does not set forth any facts sufficient in law to constitute a conviction.

3. That there is no fact or circumstance stated

therein to advise the Court that an offense has been committed against the United States.

4. That evidence against these defendants has been received and considered there on matters pertaining to former jeopardy after said jeopardy had already attached as to each of them.

5. That said indictment fails to set forth every element of the offense intended to be charged.

6. That it does not set forth any facts sufficient [89] in law to support a conviction.

7. That these defendants have been convicted without due process of law, and in violation of Articles IV, V, and VI of Amendments of the Constitution of the United States.

WHEREFORE, these defendants pray that this motion be sustained and the judgment of conviction against them be arrested and held for naught, and that they have all such other orders as may be just and proper in the premises.

HUGH L. SMITH,
Attorney for Defendant.
JOSEPH E. MARRON,
HUGH L. SMITH, and
CHAS. WISEMAN,
Attorneys for Defendant George Birdsall.

Receipt of a copy of the within motion in arrest of judgment is hereby admitted this 14th day of Jan., 1925.

STERLING CARR,
U. S. Attorney.
KENNETH C. GILLIS,
Asst. U. S. Attorney.

[Endorsed]: Filed Jan. 20, 1925, *nunc pro tunc* as of Jan. 14, 1925. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [90]

In the Southern Division of the District Court of the United States for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH GORHAM et al.,

Defendants.

MOTION TO ARREST THE JUDGMENT (JOSEPH GORHAM).

Now comes defendant, Joseph Gorham, in the above-entitled action, and against whom a verdict of "guilty" was rendered on the 14th day of January, 1925, on the indictment herein, and moves the Court to arrest the judgment against said defendant and hold for naught the verdict of "guilty" rendered against him for the following reasons:

1. That said indictment does not charge any offense against the laws of the United States, nor does it charge said defendant with the doing of anything, the doing of which is prohibited by the laws of the United States.

2. That the said indictment does not state facts

sufficient to constitute an offense against the laws of the United States.

3. That said indictment does not set forth facts sufficient in law to support the evidence.

4. That the defendants in said cause entered into a conspiracy to do the acts charged to have been done by them, is a conclusion of law and does not state any cause or offense against the laws of the United States. [91]

5. That allegation "7" in said indictment:

> "That in pursuance of said conspiracy, combination, confederation and agreement herein in this indictment set out, and to effect and accomplish the objects thereof, and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant Joseph Gorham, then and there being a duly and regularly qualified, appointed and acting police officer of the police force in the City and County of San Francisco, California, did on or about the 31st day of March, 1924, at 1249 Polk Street, in the City and County of San Francisco, in the Southern Division for the Northern District of California, within the jurisdiction of this court, received as such police officer from said defendant, George Birdsall, *alias* George Howard, *as such police officer from said defendant, George Birdsall, alias George Howard*, the sum of $90.00, lawful money of the United States,
>
> Against the peace and dignity of the United States of America and contrary to the form of

the statute of the United States of America in such cases provided:

(a) That there is no statute of the United States of America preventing a police officer or police sergeant of the city and county of San Francisco, from receiving money from any person.

(b) That it is no crime, nor is it forbidden by the laws of the State of California, for a police officer, or a police sergeant of the city and county of San Francisco, to receive money from any person.

(c) That said paragraph setting forth said alleged overt act does not state that said sum of $90.00 was received by said Joseph Gorham as such police officer or sergeant, for any unlawful purpose.

(d) That said paragraph does not state that said Joseph Gorham received said sum of $90.00 for the purpose of permitting the other defendants or any or either of them charged in said indictment, to violate any law or laws of the United States.

WHEREFORE, this defendant prays that this motion be [92] sustained and that judgment of conviction against him be arrested and held for naught and that he have all such further orders as may be just and proper in the premises.

WILLIAM A. KELLY,
Attorney for Defendant, Joseph Gorham.

[Endorsed]: Filed January 20, 1925, *nunc pro tunc* as of Jan. 14, 1925. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [93]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

PATRICK KISSANE et al.,
Defendants.

MOTION IN ARREST OF JUDGMENT (PATRICK KISSANE).

Now comes the defendant, Patrick Kissane, and respectfully moves this Court to arrest and withhold judgment in the above-entitled cause and that the verdict of conviction of said defendant, Patrick Kissane, heretofore given and made in said cause be vacated and set aside and declared to be null and void for each of the following causes and reasons:

I.

That the facts stated in the indictment on file herein and upon which said conviction was and is based and upon which judgment was pronounced do not constitute a crime or public offense within the jurisdiction of this Court.

II.

That said indictment does not state facts sufficient to charge the defendant Kissane with any

crime or offense against the United States or against any statute or law thereof.

III.

That said indictment does not state facts sufficient to charge the defendant Kissane with having conspired with the defendants named in said indictment or each or either of them to commit any crime or offense against the United [94] States or any law or statute thereof.

IV.

That the allegations in said indictment that the defendants in said cause entered into a conspiracy to do the acts therein charged to have been done by them is merely a conclusion of law and does not state any crime or offense against the United States or any law or statute thereof.

V.

That allegation 7 of said indictment, to wit:

"That in pursuance of said conspiracy, combination, confederation and agreement herein in this indictment set out and to effect and accomplish the objects thereof, and with the intent and for the purpose of effecting and accomplishing the objects thereof, the said defendant, Patrick Kissane, then and there being a duly and regularly qualified appointed and acting police officer of the police force of the city and county of San Francisco, California, did on or about the 17th day of November, 1923, at 1249 Polk Street in the city and county of San Francisco, in the Southern Division of the Northern District of California, and within the jurisdiction of this court, receive as such police officer from said

defendant George Birdsall, *alias* George Howard the sum of Five ($5.00) Dollars lawful money of the United States of America."

"Against the peace and dignity of the United States of America and contrary to the form of the statute of the said United States of America in such case made and provided," is insufficient to charge an overt act in furtherance of said conspiracy etc.; for the following reasons: [95]

a. That there is no statute of the United States of America which forbids or prohibits a person receiving money as a police officer.

b. That it is no crime nor is it forbidden by the laws of the State of California for a person to receive money as a police officer.

c. That said paragraph 7 setting forth said alleged overt act does not state that the said sum of Five Dollars was received by said Patrick Kissane as such police officer for any unlawful purpose.

d. That said paragraph 7 does not state that said Patrick Kissane received said sum of Five Dollars for the purpose of permitting the other defendants or any or either of them charged in said indictment, to violate any law or laws of the United States.

II.

That this Honorable Court has no jurisdiction to pass judgment upon the defendant, Patrick Kissane, by reason of the fact that the said indictment fails to charge said defendant with any crime against the United States, but on the contrary the

said indictment shows affirmatively that the matters and things which the said Kissane is alleged to have done in connection with the other defendants or any or either of them are not unlawful or criminal, or in violation of any penal statute of the United States and more particularly for the reasons hereinbefore set forth in paragraph one of this motion.

WHEREFORE, by reason of the premises the said defendant Patrick Kissane prays this Honorable Court that judgment herein be arrested and withheld and that conviction of said defendant, Patrick Kissane be declared null [96] and void.

JOS. L. TAAFFE,
Attorney for Defendant.
PATRICK KISSANE,
Defendant.

[Endorsed]: Filed Jan. 20, 1925. *Nunc pro tunc* as of Jan. 14, 1925. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [97]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the fourteenth day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: the Honorable JOHN S. PARTRIDGE, District Judge.

No. 15,708.

UNITED STATES OF AMERICA

vs.

WALTER BRAND et al.

MINUTES OF COURT—JANUARY 14, 1925—ORDER DENYING MOTIONS FOR NEW TRIAL AND IN ARREST OF JUDGMENT, etc.

This case came on regularly this day for further trial. Defendants Walter Brand, Joseph E. Marron, *alias* Eddie Marron, George Birdsall, *alias* Geo. Howard, Charles Mahoney, Patrick Kissane and Joseph Gorham were present with respective attorneys, H. Smith, Wm. Kelly, J. B. O'Connor, K. M. Green, Jos. L. Taaffe and Chas. Wiseman, Esqs. K. C. Gillis, Esq., Asst. U. S. Atty., was present for and on behalf of United States. The jury heretofore impaneled and sworn to try defendants was present and complete.

Court instructed jury, who, after being so instructed, retired at 11 A. M., to deliberate upon a verdict. Ordered that U. S. Marshal furnish jury and two bailiffs with lunch at expense of United States. Jury returned at 4:50 P. M. and upon being called all twelve (12) jurors answered to their names and were found to be present and, in answer to question of the Court, stated they had agreed upon a verdict and presented a written verdict, which the Court ordered filed and [98] recorded, viz.: "We, the Jury, find as to the de-

fendants at the bar as follows: Walter Brand, Not Guilty. Joseph E. Marron, Guilty, George Birdsall, Guilty. Charles Mahoney, Guilty, with a recommendation that leniency be shown and a fine only be imposed. Patrick Kissane, Guilty. Joseph Gorham, Guilty. Alfred P. Fisher, Foreman." Ordered Jurors discharged from further consideration of case and from attendance upon Court until Jan. 26, 1925, at 10:30 A. M.

ORDERED that defendant Walter Brand be discharged and go hence without day, and that the bond heretofore given for his appearance herein be and same is hereby exonerated.

Thereupon defendants Joseph E. Marron, George Birdsall, Charles Mahoney, Patrick Kissane and Joseph Gorham were called for judgment. Counsel for respective defendants moved the Court for new trial on behalf of each of said defendants. Ordered motions denied and to which order exceptions were entered. Counsel likewise moved the Court in arrest of judgment, which motions the Court denied and to which order exceptions were entered.

No cause appearing why judgment should not be pronounced,—

ORDERED that defendant Joseph E. Marron be imprisoned for period of 2 years and pay a fine in sum of $10,000.00 or, in default thereof, defendant be further imprisoned until said fine is paid or he be otherwise discharged by due process of law;

ORDERED that defendant George Birdsall be imprisoned for period of 13 months and pay fine in

sum of $1000.00 or, in default thereof, defendant be further imprisoned until said fine is paid or he be otherwse discharged by due process of law; [99]

ORDERED that defendant Patrick Kissane be imprisoned for period of 2 years and pay fine of $1,000.00 or, in default thereof, defendant be further imprisoned until said fine is paid or he be otherwise discharged by due process of law;

ORDERED that defendant Joseph Gorham be imprisoned for period of 2 years and pay fine in sum of $2,500.00 or, in default thereof, defendant be further imprisoned until said fine is paid or he be otherwise discharged by due process of law.

ORDERED that said judgments of imprisonment be executed upon said defendants Joseph E. Marron, George Birdsall, Patrick Kissane and Joseph Gorham by imprisonment in the United States Penitentiary at Leavenworth, Kansas, and that said defendants stand committed to custody of U. S. Marshal for this District to execute said judgments of imprisonment, and that commitments issue.

FURTHER ORDERED that defendant Charles Mahoney pay fine in sum of $500.00 or, in default of payment thereof, defendant be imprisoned in county jail, county of San Francisco, State of California, until said fine is paid or he be otherwise discharged by due process of law; and that, in event of imprisonment, defendant stand committed to custody of U. S. Marshal to execute said judgment, and that a commitment issue.

Vol. 64 at page 441. [100]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 15,708.

THE UNITED STATES OF AMERICA

vs.

JOSEPH E. MARRON, *alias* EDDIE MARRON, GEORGE BIRDSALL, *alias* GEORGE HOWARD, CHARLES MAHONEY, PATRICK KISSANE and JOSEPH GORHAM.

JUDGMENT ON VERDICT OF GUILTY.

Conv. of Conspiracy to Violate National Prohibition Act. Violation Sec. 37 C. C. U. S. and Act Oct 28th, 1919.

Kenneth C. Gillis, Esq., Assistant United States Attorney, and the defendants with their counsel came into court. The defendants were duly informed by the Court of the nature of the indictment filed on the 17th day of October, 1924, charging them with the crime of Violation Sec. 37 C. C. U. S. and Act October 28, 1919, National Prohibition Act; of their arraignment and plea of not guilty; of their trial and the verdict of the jury on the 14th day of January, 1925, to wit:

"We, the Jury find as to the defendants at the bar as follows: Walter Brand, Not Guilty; Joseph E. Marron, Guilty; George Birdsall, Guilty; Charles Mahoney, Guilty; with a recommendation that leni-

ency be shown and a fine only be imposed; Patrick Kissane, Guilty; Joseph Gorham, Guilty.

ALFRED P. FISHER,
Foreman."

The defendants were then asked if they had any legal cause to show why judgment should not be entered herein and no sufficient cause being shown or appearing to the Court, and the Court having denied a motion for new trial and a motion in arrest of judgment; thereupon the Court rendered its judgment;

THAT WHEREAS, the said Jos. E. Marron, George Birdsall, Chas. Mahoney, Patrick Kissane and Joseph Gorham having been duly convicted in this Court of the Crime of Cons. to Violate National Prohibition Act (Violation Sec. 37 C. C. U. S. and Act of Oct. 28th, 1919)

IT IS THEREFORE ORDERED AND ADJUDGED that the said Joseph E. Marron be imprisoned for the period of two (2) years and pay a fine in the sum of Ten Thousand ($10,000.00) Dollars, that Patrick Kissane be imprisoned for the period of two (2) years and pay a fine in the sum of One Thousand ($1,000.00) Dollars, that Joseph Gorham be imprisoned for the period of two (2) years and pay a fine in the sum of Twenty-five Hundred ($2500.00) Dollars, that George Birdsall be imprisoned for the period of Thirteen (13) months and pay a fine in the sum of One Thousand ($1000.00) Dollars; further ordered that in default of the payment of said fine that defendant so in default be further imprisoned until said fine be

paid or until he be otherwise discharged in due course of law. Terms of imprisonment to be executed upon said defendants by imprisonment in the United States Penitentiary at Leavenworth, Kansas. That defendant Charles Mahoney pay a fine in the sum of Five Hundred ($500.00) Dollars, further ordered that in default of the payment of said fine that defendant be imprisoned in the County Jail, County of San Francisco, California, until said fine be paid or until he be otherwise discharged in due course of law.

JUDGMENT ENTERED this 14th day of January, A. D. 1925.

WALTER B. MALING,
Clerk.
C. W. Calbreath,
Deputy Clerk.

Entered in Vol. 18, Judg. and Decrees, at page 65. [101]

In the District Court of the United States for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GEORGE HAWKINS et al.,
Defendants.

PRESENTATION OF BILL OF EXCEPTIONS AND NOTICE THEREOF.

The defendants Joseph E. Marron, George Birdsall, Patrick Kissane and Joseph Gorham hereby present the following as their bill of exceptions, and respectfully ask that the same be allowed.

CHAS. J. WISEMAN,
HUGH L. SMITH,
Attorneys for Joseph E. Marron and George Birdsall.

JOS. L. TAAFFE,
Attorney for Patrick Kissane.
WILLIAM A. KELLY,
Attorney for Joseph Gorham.

To STERLING CARR, Esq., U. S. Attorney for the Northern District of California, Attorney for Plaintiff:

You will please take notice that the foregoing constitutes and is the proposed bill of exceptions of the defendants Joseph E. [102] Marron, George Birdsall, Patrick Kissane and Joseph Gorham in the above-entitled cause, and that said defendants will ask for the allowance of the same.

CHAS. J. WISEMAN,
HUGH L. SMITH,
Attorneys for Joseph E. Marron and George Birdsall.

JOS. L. TAAFFE,
Attorney for Patrick Kissane.
WILLIAM A. KELLY,
Attorney for Joseph Gorham. [103]

In the District Court of the United States for the Northern District of California, First Division.

No. 15,708.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE HAWKINS et al.,

Defendants.

ENGROSSED BILL OF EXCEPTIONS OF JOSEPH E. MARRON, GEORGE BIRDSALL, PATRICK KISSANE AND JOSEPH GORHAM.

BE IT REMEMBERED, That on the 5th day of January, 1925, at a stated term of the District Court of the United States for the Northern District of California, First Division, the above-entitled cause came on regularly for trial before Hon. John S. Partridge, United States Judge presiding; Sterling Carr, Esq., District Attorney for the Northern District of California, and Kenneth G. Gillis, Esq., Special Assistant to the United States Attorney for the Northern District of California, appearing for the plaintiff; Hugh L. Smith, Esq., and Charles J. Wiseman, Esq., appearing for the defendants Joseph E. Marron and George Birdsall; Joseph L. Taaffe, Esq., appearing for the defendant Patrick Kissane; and William A. Kelly, Esq., appearing for the defendant Joseph Gorham.

Thereupon a jury was empaneled and sworn according to law and, opening statements having been made to the jury by counsel for the prosecution, the evidence hereinafter following was introduced and the following proceedings occurred: [104]

TESTIMONY OF D. E. MOCKER, FOR THE GOVERNMENT.

D. E. MOCKER, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

My name is Mr. Mocker. At the present time I am the solicitor employed by Umbsen, Kerner & Stevens. From October 1, 1923, to October 1, 1924, I was employed as a collector and solicitor by the same concern. During that time I collected rent from the premises 1249 Polk Street, City and County of San Francisco, State of California. I started to collect rent on these premises around 1922. The first tenant I collected from was a man by the name of Hay. There were two or three other tenants later, and then there was a tenant named Hawkins.

Q. Do you remember when he was in there, approximately?

A. No, I would not say offhand. I have got the books right there.

Q. Do your records show here? A. Yes.

Q. Are these the records of Umbsen, Kerner & Stevens? A. Yes.

(Testimony of D. E. Mocker.)

Q. Are they a record of the collections of rents of 1249 Polk Street? A. Yes.

Mr. SMITH.—I would like to ask the witness a few questions before we proceed.

The COURT.—Yes.

Mr. SMITH.—Q. Did you make these records yourself? A. No.

Q. Who did make the records?

A. We have a regular bookkeeper in charge of it. [105]

Q. Do you know whether these records represent a true account of the records?

A. Everything is kept right up to date in this office.

Q. You never made the entries? A. No.

Q. You were not present when they were made?

A. I know they were made from my copies.

Q. But you were not present when they were made?

A. No. The only reason I was looking at this was to establish the time that Hawkins went in.

Mr. SMITH.—We will object to any testimony from this witness regarding these records on the ground that he is not qualified as a person who is able to testify that the records are true and correct records of the business conducted at this place.

The COURT.—Overruled.

Mr. SMITH.—Note an exception.

Mr. O'CONNOR.—As to the defendant Mahoney, we object on the ground that the proper foundation has not been laid for the introduction.

(Testimony of D. E. Mocker.)

Mr. GILLIS.—We have not introduced them yet.

The COURT.—Overruled.

A. Do you want the time Mr. Hawkins went in?

Mr. GILLIS.—Q. Glance at your record there and see if you can tell at what time Hawkins went in.

Mr. SMITH.—May we see the record first?

A. I will explain—

Mr. GILLIS.—Just a moment; without explanation, let him look at them first.

Mr. SMITH.—We make the further objection that there is nothing in the records to show that they represented a record of rents [106] collected from 1249 Polk Street.

The COURT.—Overruled.

Mr. SMITH.—Exception.

Mr. O'CONNOR.—Do you want him to look at the records for the purpose of refreshing his recollections?

Mr. GILLIS.—Yes.

The WITNESS.—That is the way I took the question.

Mr. O'CONNOR.—We will object.

The COURT.—Of course, the records of a business house as to the business transactions—those were made in the regular course of business?

A. Absolutely.

The COURT.—Under the most elementary principles of law that evidence is admissible. Why spend time on that?

(Testimony of D. E. Mocker.)

Mr. SMITH.—May it please the Court, one of the elementary principles that we are dealing with now is the proper way to present records and produce evidence.

The COURT.—I have ruled. Let us have the answer.

A. The first entry we have in the name of Hawkins was May 1, 1922.

The WITNESS.—(Continuing.) The rent was paid under the name of Hawkins first in May, 1922, and last in November 1923. After I collected the rent from Mr. Hawkins, I then collected it from Mr. Marron. I would say roughly that I collected rent from Mr. Marron for a period of about a year or less. I didn't always collect from him personally. The first two or three months I did. Towards the end I doubt whether I collected one-third of the rents. The Mr. Marron I refer to is the defendant in this [107] case. The rent was $100 a month, and was paid me in currency. When I would go to the premises someone would come to the head of the stairs, open the door, and I would tell them what I wanted and they would go and bring me the money. After Mr. Marron stopped paying the rent, Mr. Mahoney generally paid me the rent. Nobody besides Marron or Mahoney paid me the rent at these premises.

Cross-examination.

(By Mr. SMITH.)

During the month of September and October, 1924, Mr. Mahoney paid the rent. It was generally

(Testimony of Walter Stevens.)
paid around the first or second of the month, and Mahoney is the only person that I saw there during the last two or three months.

(R. Tr. Vol. 1, pp. 4–10, inc.)

TESTIMONY OF WALTER STEVENS, FOR THE GOVERNMENT.

WALTER STEVENS, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

My name is Walter Stevens. I am a real estate *a real estate* agent connected with the firm of Umbsen, Kerner & Stevens, and have been so for about twenty years. I have a record of leases and contracts for leases on 1249 Polk Street during the years 1923 and 1924. They are contained in these books. The one I am now turning to is signed by George Hawkins. It is a lease for 1249 Polk Street, for one month, on a month to month basis. It is dated March 30, 1922, renting the premises on a month to month basis. [108]

Mr. GILLIS.—I have a photostatic copy of this, and if you have no objection upon that ground I will ask that it be introduced in evidence in place of the original, so that Mr. Stevens may take the book.

Mr. SMITH.—We will object to the introduction of the original upon the ground that it is immaterial, irrelevant and incompetent, there is no

(Testimony of Walter Stevens.)

foundation laid for the introduction of it, there has been no conspiracy shown to have existed between Hawkins and any other of the defendants. Hawkins is absent, so we cannot interpose any objection for him. We do not know where Hawkins is, he is not a defendant here.

The COURT.—Objection overruled. Have you any objection to the photostat copy being introduced instead of the original?

Mr. SMITH.—No, if it is a true copy we have no objection.

Mr. O'CONNOR.—On behalf of the defendant Mahoney we will object to its introduction on the ground that the instrument antedates the date the conspiracy is set forth in the indictment.

The COURT.—Overruled.

Mr. O'CONNOR.—Exception.

Mr. GILLIS.—I will ask that it be introduced in evidence and marked "U. S. Exhibit 1."

(The document is here introduced in evidence as "United States Exhibit 1.")

The WITNESS.—(Continuing.) The next lease on 1249 Polk Street is signed by Ed Marron and dated November 2, 1923.

(Said document was here introduced in evidence as "United States Exhibit 2.") [109]

Mr. SMITH.—We will object to the introduction of that one offered upon the same grounds urged to the introduction of the first.

The COURT.—Overruled.

Mr. SMITH.—Exception.

(It was here stipulated that a photostatic copy of the United States Exhibit 2 be introduced in evidence in the place and stead of the original.)

The COURT.—Is there any materiality to it except the fact that it was signed?

Mr. GILLIS.—Except the fact that it is to be used for a dwelling, and there are some notations at the bottom that I thought should be called to the jury's attention.

Mr. SMITH.—The jury is entitled to the whole thing, not a part of it.

The COURT.—You know, Mr. Smith, that these leases contain mostly formal matters. Why take the time to read it? Put in the part you want.

Mr. GILLIS.—At this time I wish to call the jury's attention to this lease which is dated November 2, 1923, for 1249 Polk Street: "The undersigned agrees not to sublet nor to assign this lease, nor directly or indirectly to use or allow the said premises to be used for any other purpose than a dwelling."

(Discussion between court and counsel.)

Mr. GILLIS.—(Continuing.) "Paid to November 1 under Hawkins' name. Takes place of Hawkins. This party has already been in possession of flat for three months. Deposit $100. Adults 3, children 2."

Mr. O'CONNOR.—As far as the defendant Mahoney is concerned, we move that that part of the document which has just been read [110] to the jury go out, as it clearly shows on the record that it

(Testimony of Chester A. Howard.)
is the notation of the office of Umbsen, Kerner & Stevens, made after the signing of the lease, not binding upon the defendant.

Mr. SMITH.—May the same objection be interposed for Marron and for Birdsall?

The COURT.—Yes. Overruled.

Mr. SMITH.—Note an exception.

(R. Tr. Vol. 1, pp. 10–13, inc.) [110½]

TESTIMONY OF CHESTER A. HOWARD, FOR THE GOVERNMENT.

CHESTER A. HOWARD, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am a Federal Prohibition Agent, and have been since April, 1924. I had occasion to visit 1249 Polk Street on about September 22, 1924.

Q. Did you purchase any drinks there?

Mr. O'CONNOR.—We object to that on the ground that it is immaterial, irrelevant and incompetent; thus far there has been no foundation laid for it, and the *prima facie* case of conspiracy has not been established, and it is one of the overt acts alleged in the indictment, and it is inadmissible until the *prima facie* case of conspiracy has been shown.

The COURT.—Overruled.

Mr. SMITH.—May that objection apply to all the defendants, and an exception to the ruling of the Court.

(Testimony of Chester A. Howard.)

The COURT.—Yes.

The WITNESS.—(Continuing.) I purchased fifteen drinks of whiskey, bought for four people and myself. You enter these premises at the foot of the stairs, the door on the outside, next to the sidewalk, by ringing three bells they admit you to the place, and you go up one flight of stairs, and there is a long hall there which several rooms lead off of, and we were shown into one of the front rooms, one of the front rooms of the flat or apartment, that are fitted up for bootlegging purposes and the like of that. [111]

They had in this room a Chesterfield set, a table, a victrola, a piano, and just ordinary house fixtures. The drinks were served in whiskey glasses off of a tray. I have a description of the person who brought the drinks to us. I believe I would recognize the person if I saw him. The party on the end of the row of people over there fits the description. The description is five feet seven inches, 155 to 165 pounds, large nose, high cheek-bones and deep set eyes, age 47. The person I refer to over there is Mr. Brand. That is not the only time I have been in the place. I went there with a raiding squad on the 2d of October. I did not purchase drinks there other than the time I have testified to.

Cross-examination.

(By Mr. GREEN.)

The date of the purchase was September 22, 1924. I positively identify Mr. Brand as the man I pur-

(Testimony of Chester A. Howard.)

chased whiskey from in those premises. I could not be mistaken about it. I am not picking him out because he has come here under that description. I remember his face. It was about 4:15 P. M. He served the drinks in the front room. I am not identifying him just because the description merely fits him.

(R. Tr. Vol. 1, pp. 13–16, inc.)

TESTIMONY OF W. F. WHITTIER, FOR THE GOVERNMENT.

W. F. WHITTIER, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am a Federal Prohibition Agent, and have been such [112] for a little over six months. I was present on the raid at 1249 Polk Street on or about October 2, 1924. Agents Lee, Eldredge and Howard, and the driver of the automobile, Camona, were with me at the time.

Q. Did you go into 1249 Polk Street?

A. I did.

Q. Did you have a search-warrant for the place?

A. We did.

Q. Did you find any liquor there at that time?

Mr. SMITH.—Just a moment, may it please the Court: The Court recalls that heretofore there have been several motions made for the exclusion of evidence. Now, will the Court consider as having been

(Testimony of W. F. Whittier.)

made, for the purpose of the record, a renewal of the motions at this time with reference to the raid of 1249 Polk Street on the 2d of October?

The COURT.—Yes, although I think, Mr. Smith, that technically it should come now in the form of an objection to the introduction of the evidence. Do not you so understand the rule?

Mr. SMITH.—Yes, that is correct, as I understand the rule. We object to the introduction of any testimony, or any evidence, upon the same identical grounds that we urged in our petition for the suppression of evidence; that petition is on file, and is a part of the records.

The COURT.—Overruled.

Mr. O'CONNOR.—May we similarly object as to the defendant Mahoney?

The COURT.—Yes.

Mr. O'CONNOR.—Exception.

Mr. SMITH.—Exception.

The COURT.—You may answer. [113]

A. Yes, we found liquor there.

Mr. GILLIS.—Q. What did you find?

A. We found 16 pint bottles of champagne in a closet, in the front room, in a trap, and in that same little closet we found a gray ledger, a gray book, nine one-fifth gallon bottles of white wine, five one-fifth gallon bottles of whiskey, two quart bottles of whiskey, one one-fifth gallon bottle of gin, three-quarters full, one-fifth gallon bottle full of gin, two bottles Bacardi rum, one one-fifth gallon bottle of brandy, two one-fifth gallon bottles of Scotch whis-

(Testimony of W. F. Whittier.)

key, one one-fifth gallon bottle one-half full of Scotch whiskey, one bottle of Vermuth, one bottle picon, one-third full, one one-gallon bottle three-quarters full of gin, eight bottles sweet wine, one bottle one-third full of whiskey, one one-gallon bottle one-sixth full of sweet wine, two sacks of Canadian beer, and 174 bottles of home brew beer.

Q. Did you make a thorough search of the place?

A. Yes.

Q. Did you go through all the rooms?

A. Yes.

Q. How were these rooms fitted up?

A. They were fitted up with a table in them; in fact, we found people sitting at a table when we were there.

Mr. SMITH.—I will ask that that go out as not responsive, being purely voluntary.

The COURT.—Strike it out.

Mr. GILLIS.—Q. State the furniture that was in the different rooms? A. Tables and chairs.

Q. Tables and chairs? A. Yes.

Q. Anything else?

A. I think in the front room there was a [114] davenport, in one room, if I am not mistaken.

Q. Did you see any bed? A. No.

Q. Who did you see there at that time that was in charge of the premises, if anyone?

A. Mr. Birdsall.

Q. Mr. Birdsall, one of the defendants in this case? A. Yes.

Q. Anybody else? A. At that time?

(Testimony of W. F. Whittier.)

Q. Yes. A. That is all.

Q. October 2d? A. Yes, that is all.

Q. I will show you a book, Mr. Whittier, and ask you to look at it; do not make any statements with reference to it until you have looked at it?

A. That is the book.

Q. I ask you if you recognize that book?

A. Yes.

Q. When did you first see that book?

A. When we got—

Q. When did you first see this book?

A. When we went in, Agent Howard and I went in to where we found the champagne in the closet, in the front room.

Q. It was on October 2, 1924? A. Yes.

Q. At 1249 Polk Street? A. Yes.

Q. Just where did you find this book?

A. In those premises, in that closet, there is a washstand, and this book was on the washstand under the cigar box, with a lot of currency in it.

Q. Was the closet locked?

A. Yes, the closet was locked.

Q. Was there anything else in the closet or on the floor of the closet?

A. Just the cigar box that was full of currency and the champagne that was in the trap in the floor.

Q. This was off one of the rooms, was it?

A. It was in one of the rooms, the front room.

Mr. GILLIS.—I offer this book in evidence and ask that it be marked U. S. Exhibit 3. [115]

(Testimony of W. F. Whittier.)

(Thereupon the book was here introduced in evidence as United States Exhibit 3.)

Said exhibit was and is in the following words and figures, to wit:

(Here insert exhibit.)

Mr. SMITH.—To which, of course, we will object.

The COURT.—You can ask your questions first.

Mr. SMITH.—Q. Mr. Whittier, I show you a paper, and I will ask you if you have ever seen that before?

The COURT.—What is that, the search-warrant?

Mr. SMITH.—That is the search-warrant.

The COURT.—The search-warrant that was served at the time?

Mr. SMITH.—Yes, it is a copy of the search-warrant, your Honor.

Q. What is that paper?

The COURT.—It identifies itself. Do you want to put it in evidence?

Mr. SMITH.—No, I do not as yet.

Q. It is a copy, is it not, of the search-warrant that you executed on the 2d of October, on 1249 Polk Street? A. Yes.

Q. You were fully advised as to the contents of the warrant at the time that you served it, were you not? A. We were.

Q. You know, do you not, that the search-warrant only authorized the search of those premises for certain liquors?

Mr. GILLIS.—I object.

The COURT.—Doesn't it speak for itself?

Mr. SMITH.—Yes, it does.

The COURT.—Why spend time on it?

Mr. SMITH.—I want to show this witness was thoroughly familiar with the contents of the warrant.

The COURT.—It does not make any difference whether *or* was or [116] not; if it was a valid search-warrant, authorizing the taking of this book, it speaks for itself; if not, it does not make any difference whether he knew it or not.

Mr. SMITH.—At this time we will ask that all testimony elicited by the Government from this witness with reference to this gray book be stricken out on the ground that it is immaterial, irrelevant and incompetent, there is no foundation for it, and the warrant did not authorize the seizure of that record.

The COURT.—Was this included in your motion before?

Mr. SMITH.—Yes, your Honor, that was one of the motions.

The COURT.—Overruled.

Mr. SMITH.—May the objection, for the purpose of the record, show that this book was not described nor designated in the warrant as one of the things to be searched or seized?

The COURT.—The warrant is in evidence and speaks for itself.

Mr. SMITH.—I want the record to show what my objections are.

The COURT.—Yes.

Mr. SMITH.—Furthermore, in the case of United States vs. Gouled, the Supreme Court of the United States held that a man's records, or books, or papers could not be used as evidence against him, because it would be tantamount to telling the man to take the witness-stand against himself; in either event, whether his records are used, or whether he is compelled to take the stand as against himself, he is an unwilling source of information concerning his actions. Now, we submit that it is directly in violation of his constitutional guarantee; that is the second ground. The first ground is that it was unlawfully taken under the warrant.

The COURT.—Overruled. [117]

Mr. SMITH.—Exception.

Mr. O'CONNOR.—As to the defendant Mahoney, we object on the ground that it was in violation of his rights under the Fourth and Fifth Amendments to the Constitution, was seized without search-warrant, and compels him to be a witness against himself.

The COURT.—Overruled.

Mr. O'CONNOR.—Exception.

Mr. TAAFFE.—In so far as the defendant Kissane is concerned, we will interpose the objection at this time that it is immaterial, irrelevant and incompetent, and no proper foundation has been laid, and, furthermore, that there has been no attempt at all made by the Government to connect Kissane with this book in any manner whatsoever.

(Testimony of W. F. Whittier.)

The COURT.—Overruled.

Mr. TAAFFE.—Exception.

Mr. KELLY.—On behalf of the defendant Gorham, the book is objected to on the ground that it is immaterial, irrelevant and incompetent, hearsay as against him, no foundation has been laid for the introduction of this book in evidence against him, upon the ground that there is no evidence before this Court that he ever conspired or confederated in accordance with the allegations of the indictment.

The COURT.—Overruled.

Mr. KELLY.—Exception.

Mr. SMITH.—May the record show an exception to all of your Honor's rulings?

The COURT.—Yes.

Mr. GILLIS.—Q. Mr. Whittier, did you see any patrons in that [118] place at that time?

A. Yes.

Q. How many, would you say?

A. I should say a dozen men and women.

Q. What were they doing in there, as far as you could see? A. Drinking.

Q. What? A. Whiskey.

Q. Did you have any conversation with Mr. Birdsall at that time? A. Yes.

Q. What was that conversation?

A. He stated that he owned the place, and gave the name of Howard.

Q. At that time?

A. Yes; he stated he owned the place; he said he bought it out recently from Marron.

(Testimony of W. F. Whittier.)

Q. Anything else? A. Not at all.

Q. Did you have any talk with him at all with reference to the book that has been introduced in evidence?

A. He wanted us to leave the book, did not want the boys to take the book; I left the book on the dining-room table while I was making out the warrant, and Howard, I believe, grabbed the book up at the time to hold it, and he says, "Can't you leave the book here?" and I said "No, we have to take it."

The COURT.—Let the search-warrant be marked in evidence as having been used upon Mr. Smith's objection.

Mr. SMITH.—Let the record show that the copy of the search-warrant was introduced in evidence by the defendant first.

(Thereupon the search-warrant was here introduced in evidence as Defendants' Exhibit "A.")

Said exhibit was and is in the following words and figures, to wit: [119]

(Here insert exhibit.)

The COURT.—The book is in evidence, Mr. Gillis; it is not very informing to the jury lying there on the table.

Mr. GILLIS.—There was a question in my own mind whether I should take the time of the jury at this time to call attention to the book.

Mr. SMITH.—Just a moment; may it please the Court, at this time I will object on behalf of the defendants that I represent to the contents of this

book being read to the jury, for the reason that no foundation has been laid, and upon the further ground that it is immaterial, irrelevant and incompetent; there has been nothing done with the book to identify it or show what the entries are, or anything of that sort.

The COURT.—Overruled.

Mr. SMITH.—Exception.

Mr. O'CONNOR.—As to the defendant Mahoney, it is objected to on the ground it is hearsay.

The COURT.—The same ruling.

Mr. O'CONNOR.—Exception.

(Thereupon a short recess was taken.)

Mr. GILLIS.—I will call your attention, gentlemen, to a few of the things in this book. For instance, on page 21 I call your attention to the fact, first, of an item here, "E. Marron, $500, rent $100, W. Brand $400." Then on page 31 we have, "W. Brand $408.97, E. Marron $603.08." Then we go to page 36, and we have at the top here, "Bird," with a list of notations under it, and here, lower down, "18/23, Birdsall drew," with "20" after it, crossed out, "Drew" underneath that, "20, 20, 20." On page 46 we again have the name "Birdsall." On page 54 we again have the name "Birdsall, Mahoney," with different items listed underneath. On page 61 abbreviated, "Bird" and "Mah" on the other side, "Mahoney" written out there. Page 69, we have [120] "Birdsall, Mahoney, Birdsall, Birdsall." On 75 we have "Mah" again, and "Bird"; here are two Birdsalls; on 81

we again have "Mah" and "Birdsall," 87 again the same thing appearing, "Mah," "Bird"; on page 93 the same, listed in the same way; 99, a similar notation; on 105 we have "Geo.," and "Chas." there, the first name. I call your attention to page 107 on which appears a summary of the profit and loss for September, 1924, showing sales of $5624.50, Cigar sales $5.65, Slot machines, $254, Total $5884.15, with a gross profit of $2552.55, and expenses, salaries, rents, and then a blank space filled with cross marks, $170, Profit $1187, and we have then the initials "E. M. $600," "Balance to divide $587.10"; again, "One-half E. M. $293.55, one-half G. B. $295.55." Then I will call your attention to page 34, an item in the center of the page after "17/23," which is marked "Gift Kissane," and above the word "Kissane" is written the word "Police." Then on page 51 we have the word in center of the page, "Police $100," and the word "Kissane $5." On page 60 we again have Kissane on the 10th, $5; on page 68, for March, we again have, on March 23, "Kissane $5"; 9th, "Kissane $5"; on the 16th, $5., on the 23rd, $5; and on the 30th "Kissane $5." On page 74, for the month of April, we have on the 6th, "Kissane $5," on the 13th marked "Gift $5, on the 20th Gift $5, on the 27th Kissane $5. On page 80 for the month of May we have on the 4th $5, on the 11th $5, on the 25th $5, and on the 17th "Kissane $5." Then on page 86, for the month of June, we have June 1, "Kissane $5," on the 8th, "Kissane $5," on the 15th "Kissane $5," on the 22d, "Police $15." On page 92, for July,

we have on the 6th*m* "Kissane $5, on the 13th "Kissane $5*m*" on the 20th, "Kissane $5," on the 27th, "Kissane $5." On page 98 [121] for the month of August we have on the 3d, "Kissane $5," on the 10th, "Kissane $5," on the 16th "Kissane $5," and on the 24th "Kissane $15." On page 104 for the month of September we have on the 21st, "Kissane $15," on the 28th "Kissane $5." Now I call your attention to page 69, and an item marked on page 69, toward the bottom of the page "Gift, $60," and underneath, as a matter of fact, the last item—this is for March, 1924, "New police $90." On page 74 we have "Gift $90," on the 16th, and on the 27th we have "Gift $60." On page 80, we have "Police," on the 22d, "$90," and on the 26th "Police $60." On page 86 we have on the 14th of June, "Police $150." On page 92 we have "Gift $150." On page 98 we have "Gift pl. $150." That is August 11. On page 104, September 15, we have "Gift $150." I call your attention to page 103, which gives a list of the stock that they had on hand at the end of September of that year, including whiskey, rum, sherry, and gin. I call your attention to page 101, which is the profit and loss statement for August, 1924, showing a net profit of $796.95, E. M. $620, balance $176.65; underneath that "½ E. M. $88.33, ½ G. B. $88.32." The same kind of a recapitulation for July, 1924, on page 94; also on page 71 for the month of March, which is a stock account, showing the different stock on hand at the end of March. On page 64, February 29, stock on hand in-

cluding bourbon, Scotch, rye, Plymouth gin, Vermuth, brandy, beer, sherry.

Mr. O'CONNOR.—At this time, if your Honor please, I ask the Court to instruct the jury to disregard the items read from the book by Mr. Gillis as to the defendant Mahoney on the ground that they are immaterial, irrelevant and incompetent, hearsay, [122] no foundation laid for their introduction, and that there has thus far not been established a *prima facie* case of conspiracy as to the defendant Mahoney.

The COURT.—Motion denied.

Mr. O'CONNOR.—Exception.

Mr. SMITH.—I will ask for the same instruction with reference to the defendant Marron, also the defendant Birdsall.

The COURT.—The same ruling.

Mr. SMITH.—And upon the further ground that the record, itself, discloses nothing that is connected with the thing that is alleged to be a conspiracy; there is nothing to connect the record that has been read with the conspiracy that is charged.

The COURT.—Motion denied.

Mr. SMITH.—Exception.

Mr. TAAFFE.—I make a motion at this time to strike out all of the evidence that has been introduced with reference to the book, in so far as it might affect the rights of the defendant Kissane on the ground that it is immaterial, irrelevant and incompetent, and in so far as he is concerned is purely hearsay, and the proper foundation has not been laid for it.

The COURT.—Motion denied.

Mr. TAAFFE.—Note an exception.

Mr. KELLY.—Your Honor will note that I objected primarily to the introduction of this book in evidence on the ground that it was immaterial, irrelevant and incompetent, as against the defendant Gorham, that it was hearsay, and not binding upon him, and there was no proper foundation laid, in that there had been no evidence showing his connection with the other defendants in any conspiracy, confederation or unlawful agreement as set [123] forth in the indictment. I now ask that all of the evidence of this book, and each and every item read by the Government to the jury in the record from the book be stricken from the record as against the defendant Gorham on like grounds. Your Honor will note that during the reading of this record the word "Gorham" was not mentioned.

The COURT.—Of course, Mr. Kelly, it cannot hurt him. Of course if that was all the evidence that was to be produced, the motion for a directed verdict would follow, but you will realize, of course, the rule that in the orderly presentation of the case, the whole thing cannot be presented at once, and that the *corpus delicti*, while it has to be established, need not be established prior to the introduction in evidence.

Mr. KELLY.—I grant the point that the order of proof is in the sound discretion of the Court.

The COURT.—Motion denied.

Mr. KELLY.—Exception.

Mr. GILLIS.—One item that has been called to

(Testimony of W. F. Whittier.)

my attention, I still wish to call to the attention of the jury in this gray book, on page 92, the name "Gorham" appears, $60, with some lines drawn through it; on the top of page 93 "Gorham, $60," and on the same page, "Joe Gorham, $60."

Mr. O'CONNOR.—If your Honor please, I renew the motion I made as to the other items as to these items, with the understanding that it is overruled and an exception noted.

The COURT.—Yes.

Mr. SMITH.—May my motion be renewed in a like manner

The COURT.—Yes. [124]

Mr. KELLY.—In behalf of the defendant Gorham, I renew the motion, your Honor, and take an exception.

The COURT.—Yes.

Mr. GILLIS.—(To Witness.) Q. I show you a bottle numbered 27936. Is that one of the bottles seized on that occasion, October 2? A. Yes.

Q. To whom was the bottle delivered?

A. To the chemist.

Mr. GILLIS.—I ask that it be introduced in evidence for the purpose of identification.

Mr. O'CONNOR.—The same objection.

The COURT.—The same ruling.

Mr. O'CONNOR.—Exception.

(The bottle was marked "U. S. Exhibit 4 for Identification.")

Mr. GILLIS.—Q. I show you a bottle marked

(Testimony of W. F. Whittier.)

on the label 27937, and ask you if that is one of the bottles seized on the occasion of October 2?

Mr. O'CONNOR.—The same objection.

The COURT.—The same ruling.

Mr. O'CONNOR.—Exception.

A. Yes.

Mr. GILLIS.—Q. Was that delivered to the chemist, also? A. Yes.

Mr. GILLIS.—I ask that that be introduced in evidence for the purpose of identification.

Mr. O'CONNOR.—The same objection.

The COURT.—The same ruling.

Mr. O'CONNOR.—Exception.

(The bottle was marked "U. S. Exhibit 5 for Identification.") [125]

Mr. O'CONNOR.—May it be stipulated that we object to all of this line of examination?

The COURT.—The same objection to all of these bottles, and the same ruling as to each one.

Mr. SMITH.—Also as to the defendants Birdsall and Marron.

The COURT.—The same may go to each defendant.

Mr. SMITH.—And an exception noted as to each?

The COURT.—Yes.

Mr. GILLIS.—Q. I show you a bottle labeled 27938, and ask you if that is one of the bottles seized on October 2 at this place? A. Yes.

Q. Was that delivered to the United States Chemist? A. Yes.

(Testimony of W. F. Whittier.)

Mr. GILLIS.—I ask that this be introduced in evidence for identification and marked.

(The bottle was marked "U. S. Exhibit 6 for Identification.")

Q. I show you a bottle numbered 27939, was that seized at the same place, at the same time.

A. Yes.

Mr. GILLIS.—I ask that this be introduced in evidence for identification and marked "U. S. Exhibit 7."

(The bottle was marked "U. S. Exhibit 7 for Identification.")

Q. I show you a bottle numbered 27940, was that seized at the same time and place? A. Yes.

Q. And delivered to the United States Chemist?

A. Yes.

Mr. GILLIS.—I ask that that be introduced in evidence for the purpose of identification and marked Exhibit 8.

(The bottle was marked "U. S. Exhibit 8 for Identification.")

Mr. O'CONNOR.—You mean just for identification or in evidence.

Mr. GILLIS.—Introduced for identification. That is all. [126]

Cross-examination.

(By Mr. SMITH.)

I arrested Mr. Birdsall on that occasion. He was the only one of all the defendants mentioned here present on that occasion at that place.

(R. Tr. Vol. 1, pp. 16–30, inc.)

TESTIMONY OF A. P. RUMBURG, FOR THE GOVERNMENT.

A. P. RUMBURG, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am a special agent in the Intelligence Unit of the Government, and have been connected with the Government for a little over three months. In October of this year I had a talk with the defendant Walter Brand. The date of the talk was October 10, 1924. Mr. Burford, special agent of the Internal Revenue, was present.

Mr. O'CONNOR.—We will object to any conversation between the witness and the defendant Brand, as to the defendant Mahoney, on the ground that this was after the consummation of the alleged conspiracy set forth in the indictment, and not binding on the defendant Mahoney, and ask that the jury be so instructed.

The COURT.—What is the date of the last raid?

Mr. O'CONNOR.—October 3, I think it is.

The COURT.—When was this conversation?

A. October 10.

Q. This indictment was returned on October 17. Was that after these defendants were all arrested?

A. I could not say it was [127] after all the defendants were arrested.

The COURT.—Of course, you know the rule, Mr. Gillis, that a statement made by one of the alleged

co-conspirators is only admissible if it is made before the termination of the conspiracy.

Mr. GILLIS.—Yes, your Honor.

The COURT.—Judge Bean's theory seems to be, and it seems to be backed up by the authorities, is that in any case the arrest of the alleged conspirators should be taken at the time of the termination of the conspiracy. However, the evidence is admissible as against Mr. Brand.

Mr. GILLIS.—Yes.

The COURT.—I will pass upon the other question, gentlemen, when the time arrives.

Mr. GREEN.—On behalf of the defendant Brand I object to the introduction of the statement on the ground that the *corpus delicti* has not yet been established.

The COURT.—That is overruled. Besides that, this is apparently directed at a confession, and if an extrajudicial confession, of course, it would not be sufficient to convict, but it is admissible just the same.

Mr. GREEN.—I know it is a question of discretion of the Court whether you admit it at this time, or not, but I think it is an attempt to convict the defendant Brand by his own statement and nothing else.

The COURT.—It could not be done. If there was no other evidence introduced against Mr. Brand, an extrajudicial confession would not be sufficient to convict him; but that does not render it inadmissible. If there is no other evidence against

(Testimony of A. P. Rumburg.)

Mr. Brand he would be acquitted without any trouble; but if there is other [128] evidence it might be considered by the jury. You may answer.

Mr. GREEN.—Exception.

The COURT.—As to the other defendants, I will rule on that when the time comes.

Mr. SMITH.—This, may it please the Court, I think is the proper time to interpose the objection that all of this evidence is inadmissible as to all of the other persons charged in the indictment for the reasons enumerated by my colleague, Mr. O'Connor; the authorities are uniform on the proposition.

The COURT.—There is no question about it, that a statement made after the termination of the conspiracy is not admissible, that is, it is not admissible against the other members of the conspiracy, or alleged conspiracy.

Mr. SMITH.—Yes.

The COURT.—But I cannot determine that now. If it should appear that this statement was made after the termination of the conspiracy, the jury will be instructed to disregard it as to all except Brand. You may answer.

A. I did.

Mr. GILLIS.—Q. Were they made at that time?

A. They were.

Q. Will you give us the conversation that you had with Mr. Brand at that time? You may use your notes to refresh your memory by if you so desire.

A. This was a statement volunteered by Mr.

(Testimony of A. P. Rumburg.)

Brand as to his residence, and as to his occupancy of the premises at 1249 Polk Street. (Reading:)

"State of California, County of San Francisco,—ss.

"On the 10th day of October, A. D. 1924, Walter Brand, being first duly sworn, upon his oath, deposes and says: [129]

"Q. You stated your name is Walter Brand?

"A. Yes, sir.

"Q. Where do you live Mr. Brand?

"A. 527 Faxon Ave., San Francisco.

"Q. When did you buy this property at 1249 Polk Street? A. July 26, 1923.

"Q. From whom did you purchase this property?

"A. A fellow by the name of George Hawkins.

"Q. You are sure that his name is George?

"A. Yes, sir, and otherwise known as Chick.

"Q. How much did you pay for this place?

"A. One thousand dollars.

"Q. How did you pay for this place?

"A. I paid five hundred dollars on July 26th and five hundred on August 26, 1923.

"Q. What did this property include?

"A. Furniture and fixtures, completely furnished five rooms and kitchen.

"Q. Do you still claim that belongs to you?

"A. No.

"Q. You ran this place entirely alone?

"A. Yes, sir, I borrowed the money to buy it.

"Q. Who loaned you the money to buy this place? A. Eddie Marron.

(Testimony of A. P. Rumburg.)

"Q. You paid this back to him from returns from the business? A. Yes, sir.

"Q. You conducted the sale of liquor at that address? A. Yes.

"Q. What kinds of liquor did you sell there?

"A. Different kinds, including whiskey and gin, beer.

"Q. You kept a book which showed receipts and expenditures in conducting this business?

"A. Yes, I kept a record of this in a book.

"Q. You would recognize this book if you would see it? A. Yes.

"Q. Is your handwriting in the book? A. Yes.

"Q. On pages two and twenty, 21, 22, 23, 24, 25, 26, 27, 28 and 29, except the headings on page two, seven, fifteen, twenty, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six and twenty-seven, twenty-eight and twenty-nine, is that not your handwriting, Mr. Brand? [130]

"A. Yes."

Q. Just stop there a second, Mr. Rumburg; showing you Government's Exhibit 3, is that the book which you showed him at the time these questions were asked and that answer given with reference to the pages? A. Yes.

Q. And the numbers of the pages that are referred to in that statement, do they refer to the pages in this book, Government's Exhibit 3, which you now have in your hand? A. They did.

Q. Now, continue with your statement.

A. (Continuing reading:)

(Testimony of A. P. Rumburg.)

"Q. Whose handwriting is these headings?

"A. A man by the name of Frank Darrell wrote those. Mr. Darrell is now dead, having died January 10, 1924. He was formerly an accountant at the World's Fair at San Francisco.

"Q. The place was rented in the name of whom while you were there? A. George Hawkins.

"Q. Did you know his street address?

"A. I did not. He lived in the place before I bought him out.

"Q. You have not seen him since you purchased this place from him? A. No.

"Q. Did you discuss the matter of buying this place with Eddie Marron before you bought it?

"A. I did not.

"Q. Marron of course knew what you were going to do when you borrowed the money to buy the place? A. I could not tell you.

"Q. Marron came there to collect the money you owed him?

"A. Yes. He came there to collect money I owed him.

"Q. When did you open this joint account at the Bank of Italy?

"A. That was about August, 1923.

"Q. Prior to this time you turned receipts over to Marron? A. No.

"Q. Before opening this bank account what did you do with this money you took in?

"A. I kept it. [131]

(Testimony of A. P. Rumburg.)

"Q. This joint account was subject to whose check?

"A. Eddie Marron and Walter Brand.

"Q. This account was closed out about what date? A. About October 18th, 1923.

"Q. About when did you leave?

"A. About November 1, 1923.

"Q. Did anyone else come in, and on what date?

"A. A man I know by the name of George, and later I understood his name was Birdsall.

"Q. He was employed by Marron?

"A. Yes, I think so.

"Q. Do you know what salary he was to receive?

"A. I did not know until he had worked about fifteen or sixteen days, that he was receiving a salary of twenty dollars per day.

"Q. Marron informed you that he was giving him twenty dollars a day, after he had worked there about fifteen days? A. Yes.

"Q. Did Marron tell you that Birdsall was buying this place?

"A. He said Birdsall was taking charge of the place and then I quit. The bookkeeper Mr. Darrell came and balanced the books, and it was then I learned that Birdsall was getting twenty dollars per day. I asked Marron if he was paying him that amount out of my money, and I told Marron that I could not afford to pay that amount for help. After the books were balanced I stayed up there for a little more than a week and was taken sick and went to the hospital. I was confined in

(Testimony of A. P. Rumburg.)

bed for almost three months, and have never been in that place since.

"Q. Did Marron visit you at the hospital?

"A. Yes. After I was there about four days he came there to see me.

"Q. How many times did he visit you after that?

"A. He never came to see me again.

"Q. You stated there was no liquor on the premises when you took over this place?

"A. Yes. There was no liquor there.

"Q. You operated this place under another name, didn't you?

"A. I bought the place from Hawkins and I did not want to take the trouble to change the telephone, rent and other bills to my [132] name, so I conducted the business under the name of George Hawkins.

"Q. You kept the record in this book until October 18, 1923?

"A. Yes. After that I had nothing further to do with this book and have no knowledge of who kept the record in it. I threw this book in the closet just off the hallway.

"Q. In addition to paying back the money Eddie Marron loaned you did you split the profits of this business with him?

"A. No. I gave him some money when we closed out our joint account at the bank, which was the balance due on the loan.

"Q. Did you have any connection with the police

(Testimony of A. P. Rumburg.)

while operating at this place, or did they visit your place at any time?

"A. Absolutely not. The police did not know such a place was in existence.

"Q. Upon being requested by telephone to come to 310 Grant Building, you came and gave these foregoing statements voluntarily, without threats or duress? A. Yes, sir."

Then it is signed "Walter Brand." "Subscribed and sworn to before me this 10th day of October, 1924, at San Francisco, California. Archie D. Burford, Special Agent."

Q. That was a complete statement of what transpired at that time? A. Yes.

Mr. O'CONNOR.—At this time I would ask that the jury be instructed to disregard the statement just read by the witness as to the defendant Mahoney on the ground that it is a statement made by a co-conspirator after the consummation of the conspiracy.

The COURT.—I will reserve a ruling on that.

Mr. SMITH.—May the same motion be made as to all the other defendants?

The COURT.—Yes. [133]

Mr. TAAFFE.—We do not make any such motion.

Mr. KELLY.—The defendant Gorham makes no such motion.

(R. Tr. Vol. 1, pp. 31–39, inc.)

TESTIMONY OF W. E. BIVENS, FOR THE GOVERNMENT.

W. E. BIVENS, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I reside at 459 Turk Street, and have lived here about 25 years. During the latter part of 1923, and up to October, 1924, I visited 1249 Polk Street. It was a long time ago that I visited there. I cannot recall exactly, approximately a year and half ago; something like that, I don't know exactly who was running the place then. I purchased intoxicating liquor there. I could not exactly tell you during what period of time. Some time back. Possibly a year and a half back. I suppose it was whiskey that I purchased there. That is what I asked for. I suppose it was what I got. During September or October and November, 1923, I purchased liquor from two or three different persons. One of them was Birdsall and Mahoney, and another was Brand. That is all I remember of. I think they are the three defendants in this case. I recognize them as the same individuals. I would go there quite frequently. I don't know how often. I could not tell you. I guess once a week, sometimes twice a week, and maybe sometimes once in two weeks. I would not say that on each occasion that I went there I secured whiskey, because several times I did not. I had intoxicating liquor

(Testimony of W. E. Bivens.)

there quite frequently. I have seen Mr. Marron there and the other defendant in this case. I would say I saw them [134] about the latter part of last year, I think along in October; I don't know. I could not tell you positively if it was prior to October, 24. I think the first time I ever met Mr. Birdsall was in that place. I have known him for a long time. That would be probably sometime the latter part of 1923 or the latter part of 1924, this last year, I guess. I guess 1923. I possibly knew him seven or eight months of the time he was up in that place.

Cross-examination.

(By Mr. O'CONNOR.)

I am in the real estate business located at 306 Humboldt Bank Building. I don't remember when I first visited 1249 Polk Street. I could not tell you exactly within a month or so. I know I have been there quite often within the last year. I must have been in that place in November, 1923. I am positive of that. I could not say that was the first time in November, 1923, that I was there. I might have been there before. I went there quite often. Not every day, possibly two or three times a week. Sometimes once a week, sometimes maybe possibly two or three weeks I didn't go. I was subpoenaed in this case by the Government. I testified before the Federal Grand Jury with regard to this case. Prior to being called as a witness in this case, I talked the facts of the case over with the Govern-

(Testimony of W. E. Bivens.)

ment authorities. I think I talked them over with Mr. Gillis. Mr. Gillis came to my office for the first talk; one time he was alone, and the next time he had somebody with him. I think Mr. Gillis was the first Government officer that I talked to about this case. There was someone else came there. I could not swear whether it was him or not. Mr. Gillis wanted to know—my name was supposed to be in the paper—running down an investigation about who were frequenting that place, I suppose—wanted to find out who I was. I told him who I was. Neither Mr. Gillis [135] nor any other Government official at any time before I took the witness-stand here threatened me with prosecution if I failed to testify. At no time did they do that, nor did they promise that they would not prosecute me. I testified before the Federal Grand Jury with regard to this case. I was not told by any person that if I would testify before the Grand Jury that I would not be prosecuted. I was told I had my constitutional rights, and I needn't answer questions unless I wanted to. I signed a statement of what I testified to. I was not advised that if I did testify before the Grand Jury I would be granted immunity.

(R. Tr. Vol. 1, pp. 39–44, inc.)

Cross-examination.

(By Mr. GREEN.)

I visited these premises frequently and purchased drinks from different people there, from

(Testimony of W. E. Bivens.)

Brand, Mahoney and Birdsall. I can't tell definitely when it was that I purchased drinks from Brand. It has been so long ago I can't recall it. I was quite a regular customer on those premises. I saw Brand there before any of the other defendants. It must have been more than a year ago. I don't think I ever saw Brand there after November 1, 1923. I didn't see him around there in September or October, 1924 at all. I don't remember having visited those premises about September 22, 1924, or during the latter part of the month of September, 1924. It might have been around those dates. I don't remember dates. I visited those premises in the fall of 1924, and at that time bought drinks from Birdsall and Mahoney. I didn't see Brand around there at that time. I hadn't seen him there for about a year. I would not say exactly, but it was prior to that anyway. I know the defendant Brand fairly [136] well. I know of my own knowledge that he got out of that place in the fall of 1923. I remember something about the time he got out. I don't remember the date, because I didn't pay any attention to it. I don't think he ever had any connection with the place afterwards. I don't know where he works now. I remember that he went to a hospital when he got out of there, and was very sick. I was there the night he left, the night that he went to the hospital very sick. I don't know that he is working for an undertaking establishment in the city now. At any rate I can say with definiteness that I have

(Testimony of Rudolph Herring.)
not seen him around those premises for over a year.

(R. Tr. Vol. 2, pp. 46–48.)

TESTIMONY OF RUDOLPH HERRING, FOR THE GOVERNMENT.

RUDOLPH HERRING, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

My name is Rudolph Herring. I reside at 1625 Polk Street. I conduct a bakery and restaurant business at No. 1233 Polk St. I have had occasion to visit 1249 Polk Street in November, 1923. At that time I saw Birdsall and Walter Brand at that place, the two defendants in this case. I purchased intoxicating liquor at that place—whiskey. I frequented that place during that time for about twenty days, fifteen or twenty days. During those fifteen or twenty days I would go in and purchase drinks, about six or eight times a day. At the time that I purchased drinks there I always purchased them from either Mr. Brand or Mr. Birdsall. It was always whiskey that I purchased. I saw Mr. Marron in there, not frequently, once in a while, that [137] is all.

Cross-examination.

(By Mr. GREEN.)

This occurred in the fall of 1923, in the month of November. I would judge it was from the 12th

(Testimony of Rudolph Herring.)

to the 30th of November. It might have been October, too. I might have been there, too, in October, but I don't think so. It would not refresh my memory at all on the point if I was told that Brand went to the hospital about the 1st of November and was there for about three months. I know that I purchased drinks from Mr. Brand. It was not in October; it was in November. I am very positive about that. I am not positive that I purchased liquor from the defendant Brand at those premises in the month of November, and particularly about the 28th, during all of that time I mean. From about the 13th on; maybe before that, but I say in November. I would go there on alternate days, and some days see Brand and some days see Birdsall. In the morning I used to get a drink from Brand; in the afternoon I got it from Birdsall. I hadn't been drinking since May of that year in those premises. I first started giving my patronage to those premises in the month of November. I never purchased drinks there until the 1st of November that I knew of. I might have been there in October, but I am not quite sure, because I don't think I had been drinking before the month of November. I had been on the water-wagon. I quit drinking in May, and fell off in November, and climbed back on November 30, and I have not touched a thing since. I started drinking about the 1st of November and quit on the 30th, and have not drank since. I testified before the

(Testimony of George W. Marsh.)

Grand Jury in this case, and at the time I did not sign a waiver of immunity.

(R. Tr. Vol. 2, pp. 48–51, inc.) [138]

TESTIMONY OF GEORGE W. MARSH, FOR THE GOVERNMENT.

GEORGE W. MARSH, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

My name is George W. Marsh. I reside at 535 Fourth Avenue. My business is a building inspector. During the months of October and November, 1923, I had occasion to visit 1249 Polk Street. I purchased drinks of intoxicating liquor in that place, beer, gin and highballs. I suppose the highballs were made out of whiskey. I guess it was from Brand, Walter Brand at that time that I purchased the drinks. I also purchased drinks from Mahoney and Birdsall. I made the purchases from Mahoney and Birdsall during that year, and during 1924, some in 1924 also. I frequented the place almost up to the time it was closed, but I had been there only a few times in the last seven or eight months; maybe twice a month, or something like that. I purchased drinks during that period in 1924 from Mahoney or Birdsall. It was intoxicating liquor, supposed to be, that I purchased,—beer or whiskey.

(Testimony of George W. Marsh.)

Q. Did you ever see the defendant, Eddie Marron, there? A. Yes.

Q. Frequently or otherwise?

Mr. SMITH.—I don't want to clutter up the record, as I have already informed the Court, with a lot of objections, but questions of that sort are not only leading, but suggestive.

The COURT.—I don't think that is a leading question. I will overrule the objection.

Mr. SMITH.—Exception.

The WITNESS.—(Continuing.) Well, I guess earlier. I saw him [139] frequently, but toward the end I didn't see him, because I was not in there very often. In 1923 I went in that place maybe a couple of times a week, and after that a couple of times a month.

Cross-examination.

(By Mr. GREEN.)

I have known the defendant Walter Brand since I went into the place the first time, a little over a year ago, I think it was. I first started going there a little over a year ago. I could not tell you the exact date. It was the fall of 1923. The first one of the defendants that I saw there was Walter Brand, I think. After that he disappeared from the place. I didn't see him after the 1st of November at all. I never purchased any drinks from him there after the 1st of November. I didn't see him around the premises at all. I was there along in September of 1924, I think once or twice in that

(Testimony of George W. Marsh.)

month. I didn't see Brand there. I understood he was sick. I don't know whether he is employed in an undertaking parlor at the present time. I never saw him there during the year 1924 at all. I was not a regular patron of that place in 1924. In 1923 I was. I didn't testify before the Grand Jury in this case. I have never been prosecuted as a co-conspirator in this case. I have never been informed against, nor has there been a complaint filed against me, nor have I been arrested.

The WITNESS.—(To Mr. Smith.) I never saw Marron wait on anybody in that place. When I saw him he had his hat and coat on. He was in there, of course. I don't know what he was doing. He never served me with any liquor. I never bought any liquor from him. [140]

Cross-examination.

(By Mr. O'CONNOR.)

Since October 3, 1924, Mr. Parker was the first Government agent or official that I have talked to about this case. I don't know when that was. It was one evening—I could not give you the date. I was called down to the Federal offices. It was during October, 1924,—to an office in the Grant Building. I presume they sent for me because my name was in that book. When I came down to the office in the Grant Building, Mr. Parker was there, and I don't know the other gentleman, I forgot the other man's name. It was not Mr. Oftedal. I can recognize the man in the rear there now. I believe it

(Testimony of George W. Marsh.)

was about the 1st of October. I was not again interviewed by any Government officer, and not until I came to take the stand here to-day. As close as I can remember, it was about October or November, 1923, that I first went to this place. I was there continually, that is off and on, until October 3, 1924, but not very much in the last seven or eight months. To my knowledge, I think I first saw the defendant Mahoney at the premises 1249 Polk Street about the end of 1923.

The COURT.—Was Mr. Mahoney there at the same time that Mr. Brand was?

A. I don't think so.

Q. At any time? A. I don't think so.

(R. Tr. Vol. 2, pp. 51–55, inc.)

TESTIMONY OF STEPHEN V. KEVENEY, FOR THE GOVERNMENT.

STEPHEN V. KEVENEY, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

My position with the Government is a Federal [141] Prohibition Agent, and I have been one for six months, from about July, 1924.

Q. In June or July, 1923, did you ever have occasion to visit 1249 Polk Street?

Mr. O'CONNOR.—That is objected to on the ground it is immaterial, irrelevant and incompe-

(Testimony of Stephen V. Keveney.)

tent, and in no way connected with the conspiracy charged in this indictment.

The COURT.—I do not see your point.

Mr. SMITH.—There is no foundation laid for the introduction of this testimony, and we object upon the ground that none of the defendants upon trial here have been shown to have had any connection at the time designated by the Government's attorney.

The COURT.—The objection is overruled.

Mr. SMITH.—Note an exception.

A. I did.

Mr. GILLIS.—Q. Did you purchase any drinks in June, 1923, intoxicating liquor, in that place?

Mr. SMITH.—The same objection.

The COURT.—Same ruling.

Mr. SMITH.—Exception.

A. I did.

The WITNESS.—(Continuing.) I purchased drinks from George Hawkins. I purchased four drinks of whiskey and a bottle of whiskey. I visited the place on July 3, 1923. At that time I purchased intoxicating liquor from George Hawkins.

Mr. SMITH.—Objected to on the ground it has been asked and answered.

The COURT.—This is another occasion.

Mr. GILLIS.—Yes.

Mr. SMITH.—What was the date of the first?

Mr. GILLIS.—In June.

A. Whiskey was purchased on that [142] occasion.

(Testimony of Stephen V. Keveney.)

Cross-examination.

(By Mr. O'CONNOR.)

I became a Federal Prohibition Agent in July or August, 1924. Prior to this time I was not an undercover agent for the Government. At no time before July or August, 1924, was I connected with the Government. At the time that I made this purchase of liquor at those premises from George Hawkins in 1923, I was not employed by the United States Government either as an undercover agent or as a Federal Prohibition agent, or as an informer. At that time I was assistant cashier for the Merchants' Parcel Delivery. The two visits that I have testified to are the only visits that I ever made to this place. I didn't go there alone. I went there with some friends.

Mr. SMITH.—I will ask that the entire testimony be stricken out upon the ground it is immaterial, irrelevant and incompetent, and in no way connected with any of the defendants who are here on trial. For the Court's information, I desire to remind the Court that Mr. Hawkins has never been arrested, he has never been arraigned, and he is not before the Court. This testimony all relates to the conduct of the place at the time it is alleged Hawkins was in charge. Hawkins has never been connected with any of the defendants, and for that reason I ask that the entire testimony be stricken from the record.

The COURT.—Motion denied.

Mr. SMITH.—Exception.

(R. Tr. Vol. 2, pp. 55–58, inc.) [143]

TESTIMONY OF L. V. BYBEE, FOR THE GOVERNMENT.

L. V. BYBEE, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

My position with the Government is that of a Federal Prohibition Agent, and I have been such since May, 1924. I visited 1249 Polk Street on September 27, 1924. I purchased six gingerale whiskey highballs there at that time. I have a description of the person from whom I purchased them. I didn't know his name at that time. I think I know his name now. I am not quite sure of it. My best recollection is that it was a man known as Eddy Marron.

Cross-examination.

(By Mr. GREEN.)

The description I have is a man five feet—about five feet seven and one-half—this is an approximate description, of course—about 35 to 38 years of age, about 140 to 150 pounds in weight; I believe that is something near it; I don't remember the exact number of pounds; perhaps it was 135 to 145; dark hair; I remember the person was a trim, dapper, well-dressed person. I didn't visit the premises with Agent Howard a few days before that. I do not know the defendant Walter Brand.

(Testimony of L. V. Bybee.)

(Thereupon Walter Brand, one of the defendants, at the request of his counsel, stood up.)

That is not the man that I saw on those premises. I only saw just the one person who served us the drinks that night. I only visited the premises once.

Cross-examination.

(By Mr. SMITH.)

I know Mr. Marron when I see him now. I picked him [144] out when I first saw him up here in the corridor. I had previously seen his picture. No one pointed him out up to that time. I asked someone if that was Mr. Marron. I don't recall the person that I asked; somebody in the corridor. I asked him yesterday. I don't remember who it was. I asked the question with the idea of making sure which one was Marron. He was one of the central figures in this case, and I was curious to know whether or not it was Marron. I don't remember who I asked. I asked who the other people were. I don't recall who they were. Some of the men I was talking to. I don't recall whether they were Prohibition Agents or Intelligence Units men, or who they were. I have been talking this matter over with the Intelligence Unit men and the Prohibition Agents as to the identity of the individuals I saw in the hall yesterday. I don't recall entirely who were the Intelligence men or who were the Prohibition Agents that I talked to. I think I recall Mr. Whittier and Mr. Lee and Mr. Gwynn. I can't recall whether there were any

(Testimony of L. V. Bybee.)

others I asked as to the identity of these men at the time or not. Those are the only three that I can remember. I don't recall which one of the three pointed out Marron. There was another man that resembled Mr. Marron, and I asked whether that was Ward Marron, as I thought there was a resemblance between the two men, and then there was a man whose picture I had seen in the paper, Mr. Birdsall, and I had previously seen Mr. Mahoney, so that I knew who he was. Then there was the gray-haired gentleman, I remember asking someone who he was; and I think all of the men in the case were pointed out to me, that were in a crowd; I think there were four or five men out there standing talking. No one pointed out any person as being Ward Marron. I asked the question of someone whether one of the men in the crowd was Ward Marron, because I had heard his name also. If Eddie Marron was the man who served [145] me the drinks at 1249 Polk Street on September 27, I did have a conversation with him. I am not absolutely certain that he was the man. It is not purely a guess, no. To the best of my recollection, Eddie Marron is the man who served us with the drinks there that night. I have a description of the man in my buy report. The description is in my note-book. I have the note-book with me and the buy report also. I looked at the buy report for the purpose of refreshing my memory. The description in the buy report was taken from my notes that I made at the time. It is "1249 Polk

(Testimony of L. V. Bybee.)

Street, upstairs, 6 times 50, $3; that is B. T., 5 feet 7½, 145 to 150, 35 dark hair, smooth shaven." I made those notes after returning to my room, which was a very short distance from 1249 Polk Street. I made them that night, the night of September 27th. "10–2–24" means the date when the warrant was issued. I believe it was the date that I secured the warrant. The description in the warrant was partially taken from these notes. When I completed my buy report I made more complete data on the case. An informer was with me that night,—that is, a companion who was not connected with the department, and he didn't know what I was doing. He didn't know that I was a Prohibition Agent. We were trying to get a buy on 1249 Polk Street. I took this party in as a companion, because going there alone would possibly create suspicion. I had never been there before. With the description before me, all of the facts are fairly clear in my mind. My mind is well refreshed on the most important points. I have stated to the best of my recollection that the individual I bought the liquor from is Eddie Marron. If I would be absolutely certain I would come out with an entirely positive statement on it. To the best of my recollection Eddie Marron was the man who served the drinks. Aside [146] from the assistance that I received from anyone else, I could independently pick out Marron as the one who served me the liquor. That is what I did when I came into the hall. He was not pointed out to me.

(Testimony of L. V. Bybee.)

I picked him out. I hadn't previously seen him any other time, to the best of my knowledge, except at 1249 Polk Street, and when I saw him yesterday; I saw pictures in the paper. I have not seen him that I know of in the *interim*. I have not seen him since the night of September 27, 1924. I had read over my description, of course, and was on the lookout for the man who sold me the drinks. There was no doubt in my mind as to whether it was Eddie Marron or Ward Marron when I saw him yesterday. I am not positive that I know Ward Marron, no. I was interested in Ward Marron because of the statement made that he was trying to kill another gentleman who was with me in there. I was in the party. I was interested because of that. There was another man with him whose facial resemblance was very much the same as Eddie Marron's, and I judged they were brothers, because there was that resemblance. There is a possibility that it could well have been somebody else other than this man here that served me drinks, but I feel certain in my mind that he is the man that served the drinks.

(R. Tr. Vol. 2, pp. 58–67.)

TESTIMONY OF JOSEPH S. CAMPLONG, FOR THE GOVERNMENT.

JOSEPH S. CAMPLONG, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

My position with the Government is a Federal Prohibition Agent, and has been such for about a year. I was present at 1249 Polk Street on February 26, 1924. I purchased intoxicating [147] liquor there at that time,—two drinks of Scotch whiskey. I know the man I purchased it from. He gave his name as Eddie Marron. He is one of the defendants in this case.

Cross-examination.

(By Mr. SMITH.)

I didn't make any notes of the incidents that occurred on the evening of that visit other than my regular buy report. I didn't keep a separate little diary at that time; I was working under cover. The man happened to give his name to me at that time because I went there to make a deal for ten cases of liquor, and I was introduced to him, and after talking he told me his name was Eddie Marron. I had never seen him before that time. I have seen him since, on March 1, 1924. At that time I saw him at the place, 1249 Polk Street. I have not seen him since then. I didn't buy the ten cases of liquor from him. I went there for that

(Testimony of Joseph S. Camplong.)

purpose. There were several men there in the place besides Eddie Marron that I didn't know. Agent Parker was with me on the first visit. That is the man that was quite active in Los Angeles; he was from the Los Angeles office. He is no longer connected with the Department.

Q. Do you know where he is now?

Mr. GILLIS.—I think that is immaterial, and I object to that on that ground, and irrelevant.

The COURT.—Objection sustained.

The WITNESS.—(Continuing.) I didn't make any notes of the incidents that evening other than the case report that I made out.

Mr. SMITH.—Q. Was there ever any prosecution based, if you know, upon the purchase made by you at that time?

Mr. GILLIS.—The record is the best evidence of that, and I object to it on that ground.

Mr. SMITH.—I am asking if he knows. [148]

The COURT.—It does not make any difference if he knows or not. The record is the best evidence. Sustained.

Mr. SMITH.—Q. Did you ever go to a United States Commissioner for the purpose of securing a search-warrant based upon that purchase?

Mr. GILLIS.—I think it is entirely immaterial and irrelevant.

The COURT.—Sustained.

Mr. SMITH.—I take an exception to the sustaining of both objections.

(Testimony of Joseph S. Camplong.)

The WITNESS.—(Continuing.) The reason that I did not purchase the 10 cases of liquor that I went there to buy was because I could not get the funds at the time to buy that much liquor. I was in the Government service. I could not get the money from the Government.

The COURT.—Did he agree to sell you that liquor?

A. Yes, sir, he agreed to sell it, but I could not get the funds from the office.

The WITNESS.—(Continuing, to Mr. Smith.) I could not get the funds to buy it.

Redirect Examination.

(By Mr. GILLIS.)

I was there on March 1, 1924. I purchased some liquor there then from Eddie Marron. There were four drinks at fifty cents each of Scotch whiskey.

Recross-examination.

(By Mr. SMITH.)

I only made a mental description of Eddie Marron at the time, other than I know him when I see him, though.

(R. Tr. Vol. 2, pp. 67–70, inc.) [149]

TESTIMONY OF CHESTER A. HOWARD, FOR THE GOVERNMENT (RECALLED—CROSS-EXAMINATION).

Cross-examination.

(By Mr. GREEN.)

Yesterday I testified that on the 22d day of September, 1924, I purchased fifteen drinks of whiskey

(Testimony of Chester A. Howard.)

at the premises from the defendant Walter Brand. There were four other people there at the time whom I met in another bootlegging establishment on Bush Street. There were no other Federal Agents with me.

(R. Tr. Vol. 2, pp. 70–71.)

TESTIMONY OF GEORGE H. NEARY, FOR THE GOVERNMENT.

GEORGE H. NEARY, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am in the used car business. I was connected with the Government as a Prohibition Agent for about 2½ years. I was a Prohibition Agent on May 15, 1924. On that date I had occasion to visit 1249 Polk Street. I went there with a search-warrant, and found 44 quarts of wine, two gallons of gin, one gallon jug half full of whiskey, three sacks—

Mr. SMITH.—What was the date?

Mr. GILLIS.—May 15, 1924.

Mr. SMITH.—May it please the Court, at this time we are going to ask that the testimony heretofore given by the agent be stricken out for the purpose of renewing the motion that I have heretofore made.

The COURT.—I will not strike it out until I have heard your reason. What are the grounds for it? [150]

Mr. SMITH.—May it please the Court, on the 15th day of May, the records of this Court show that certain violations of the National Prohibition Act took place at 1249 Polk Street; thereafter an information was filed, that is, subsequent to the 15th day of May, in this Court, the action being numbered 15018. In that information George Birdsall was charged with violating the National Prohibition Act. On the 23d of May, the defendant, George Birdsall, came into this courtroom and entered a plea of guilty to that charge. The Court imposed judgment, and that judgment was fully satisfied. Heretofore I have entered a plea in bar to any evidence that might be elicited at this trial, and I renew the motion now upon the ground that the defendant Birdsall has been once in jeopardy, he has answered to the Government for any infraction of the law that he might have been guilty of, and he has satisfied the judgment imposed upon him by the Court; and I submit that evidence of that sort cannot be used against him in any other prosecution, and for that reason I ask that the entire testimony of Agent Neary, or Mr. Neary, formerly Prohibition Agent, be stricken from the record.

The COURT.—Of course, Mr. Smith, in the first place, the defendant Birdsall is not charged with the offense there; the jury, of course, will be instructed that they could not find him guilty upon the charge of either possessing or selling liquor or maintaining a nuisance; that, in the first place; in the sec-

(Testimony of George H. Neary.)

ond place, of course, it is well recognized that where a conspiracy is charged for a series of crimes, the mere fact that one man may have been punished for one of the overt acts is no bar to the charge of conspiracy; in the third place, even if that were so, it would not affect the evidence as to the other defendants. The motion is denied.

Mr. SMITH.—As to all the defendants? [151]

The COURT.—Yes.

Mr. SMITH.—Note an exception.

Mr. O'CONNOR.—An exception as to the defendant Mahoney.

Mr. GILLIS.—Proceed with your answer.

A. And 3 sacks containing 24 pints of beer, 12 quarts of whiskey, 10 quarts of gin, 10 gallons of alcohol, and 3 quarts of champagne.

The WITNESS.—(Continuing to Mr. Gillis.) I arrested a man that night by the name of George Howard. He is the defendant Birdsall.

Cross-examination.

(By Mr. SMITH.)

I don't remember that subsequent to that arrest I appeared in the District Court and testified to the facts that I have testified to here now. I can't recall that. I don't believe I have. I have no recollection of it.

Mr. SMITH.—Q. Mr. Neary, here is record No. 15018—it is stipulated that this is an information filed in this court, and the number is 15018?

Mr. GILLIS.—Yes.

(Testimony of George H. Neary.)

Mr. SMITH.—Q. Mr. Neary, I show you this information, and attached to the information is an affidavit bearing the signature George Neary: Is that your signature? A. Yes.

Q. I ask you, Mr. Neary, if that affidavit was signed by you for the purpose of having an information filed in this court?

Mr. GILLIS.—Just a moment. To which I object as being incompetent, and irrelevant, that the affidavit speaks for itself, the record speaks for itself.

The COURT.—Is it for the purpose of impeachment?

Mr. SMITH.—No, it is not.

The COURT.—Is it for the purpose of making your point?

Mr. SMITH.—Yes.

The COURT.—You do not have to ask him anything about it. All you have to do is to offer the record. If your point is good, [152] the Court of Appeals will so hold.

Mr. SMITH.—Then at this time I will offer in evidence an information filed, No. 15018, in which the United States of America is plaintiff, and George Howard, the defendant; that record shows that on the 15th of May, 1924, at 1249 Polk Street—

The COURT.—Never mind what it says. Is there any objection to it?

Mr. GILLIS.—No objection to the record.

The COURT.—All right.

Mr. SMITH.—We will offer it.

The COURT.—Now, you may state what it shows, if you want to.

Mr. SMITH.—This is offered, may it please the Court, to show that the matters testified to by Mr. Neary have already been disposed of by this court, by this information, and I will ask that the entire testimony of Mr. Neary be stricken out upon the ground that the defendant has already been prosecuted and punished for the offenses, if any, he committed at that time.

The COURT.—Motion denied.

Mr. SMITH.—Exception.

Mr. GILLIS.—Just one thing, I ask that the record be corrected on, and that is, Mr. Smith made the statement that it shows that what Mr. Neary has testified to has already been disposed of by this Court, which is not the fact.

The COURT.—Of course, the jury will be properly instructed on that, Mr. Gillis. The fact that a man has been punished for one of the overt acts in a series of crimes, of course, is not a defense to a conspiracy, to commit those crimes generally. The jury will be so instructed.

Mr. SMITH.—So that the record may be complete, I will ask that the entire record of that case be admitted.

The COURT.—It will be admitted. [153]

(Thereupon the record of the United States District Court in action No. 15,018 was introduced in evidence as Defendants' Exhibit ——.)

The said exhibit was and is in the following words and figures:

(Here insert exhibit.)

(Thereupon the record of action No. 15,018 was admitted in evidence. Said record shows that George Howard, referred to and known as George Birdsall, *alias* George Howard, in this case, on May 20, 1924, pleaded guilty to an information charging a violation of the National Prohibition Act, and that on May 20, 1924, he was fined the sum of $500, which said fine was paid on June 2, 1924.)

TESTIMONY OF G. L. LEE, FOR THE GOVERNMENT.

G. L. LEE, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am a Federal Prohibition Agent, and have been since February, last year. I was present at 1249 Polk Street on October 2, 1924. I went there with other agents with a search-warrant. We had a driver by the name of Camona. He rang three bells. That was supposed to be the way of entering, and the door was opened and we walked right in. When we went in I went right up the stairs and went directly to the kitchen—what used to be a kitchen. I saw liquor in the kitchen. We started to search and there was liquor in the ice-chest and in the kitchen closet there was wine and whiskey,

(Testimony of G. L. Lee.)

and in the ice-chest there was Canadian Rainier Beer—principally beer in the ice-chest.

Q. Did you see any other evidence of liquor there or anything that is used in connection with liquor?

A. Well, in the kitchen—

Mr. SMITH.—Just a moment. That is objected to on the ground that it is calling for the opinion and conclusion of the witness. [154]

The COURT.—It is overruled.

Mr. SMITH.—Note an exception.

The WITNESS.—(Continuing.) There was no stove in the kitchen, there was a cash register, a slot machine standing alongside of the cash register, and a table in the center of the kitchen; the next room was a serving-room next to the kitchen, which was a dining-room, a table in there, and chairs, and a slot machine also in that. On the back porch there were not any stairs from the back porch down into the yard, but it was full of bottles, thousands of empty bottles, beer bottles and whiskey bottles.

Q. Did you see any evidence there of anyone living in that place?

Mr. SMITH.—Just a second. That is calling for the opinion and conclusion of the witness.

The COURT.—Overruled.

Mr. SMITH.—Note an exception.

The WITNESS.—(Continuing.) No. I believe I was in all of the rooms. There were no signs of any beds. I believe there was a davenport in the front room, in the front room to the south. I saw

(Testimony of G. L. Lee.)

no bed. I didn't see any dishes or any evidence of cooking. There was no dishes in the kitchen closet. There was just liquor and cigarettes and stuff like that.

Q. Did you see slot machines in any of the rooms?

Mr. SMITH.—That is objected to on the ground it is immaterial, irrelevant and incompetent, and has no bearing on the issues involved in this case.

The COURT.—Overruled.

Mr. SMITH.—Note an exception.

The WITNESS.—(Continuing.) The slot machines that I noticed particularly were in the two back rooms; the other front rooms, I was in them very little. I just took one walk up the front. [155]

Mr. GILLIS.—Were you present at that time on October 3, 1924?

Mr. SMITH.—Just a second: At this time, may it please the Court, there has been an order suppressing evidence obtained at that time, on the defendant's person.

The COURT.—That is evidence seized on October 3d?

Mr. SMITH.—Yes.

Mr. GILLIS.—There has been an order suppressing the evidence as to the defendant Birdsall alone.

Mr. O'CONNOR.—At this time, if your Honor please, on behalf of the defendant Mahoney, all of this evidence is objected to on the ground that on October 2d a raid was made, and on October 3d an-

(Testimony of G. L. Lee.)

other raid was made on a search-warrant, the buy of which had been made prior to the raid of October 2d, and we object to this evidence on the ground that there was no proper ground for the issuance of the search-warrant.

The COURT.—Overruled.

Mr. O'CONNOR.—Exception.

Mr. SMITH.—May the same objection go for the defendants I represent.

The COURT.—Yes.

Mr. SMITH.—Exception.

Mr. GILLIS.—Answer the question.

A. Yes, I was present on the raid of October 3d. I assisted in searching the premises on October 3d. We found liquor but not as much as on the first raid. I have a list of it here. Two bottles of port wine, one bottle of port wine three-quarters full, one bottle of whiskey, one bottle one-third full of whiskey, one bottle containing two ounces of whiskey, one bottle three-quarters full of brandy, one bottle half full of Scotch whiskey, one bottle one-third full of Vermuth, two bottles of gin, one one-gallon bottle three-quarters full of gin, one bottle of [156] Bocarde rum, one bottle of Bocarde rum nearly full, two sacks of Canadian beer.

The COURT.—Had you cleaned out the place on the 2d of October? A. Yes, sir.

Q. You found this liquor on the 3d?

A. We found this the next day.

The WITNESS.—(Continuing to Mr. Gillis.) We arrested a defendant by the name of Charles

(Testimony of G. L. Lee.)

Clark, who afterwards proved to be Mahoney. He is the defendant in this case. He gave the name of Charles Clark at the time of his arrest.

Cross-examination.

(By Mr. O'CONNOR.)

After I arrested the defendant he gave the name of Charles Clark. I spoke to him at the Bush Street Police Station, and I left him at that place. I booked him there under the charge of violating the National Prohibition Act.

Cross-examination.

(By Mr. GREEN.)

I arrested George Birdsall on the raid of October 2d.

Mr. SMITH.—Just a second before Mr. Lee leaves the stand. May it please the Court, at this time I move that the entire testimony be stricken out and the jury instructed to disregard it upon these grounds: As I understand the situation, the reason behind the exclusion and suppression of this evidence on behalf of the defendant Birdsall is that there was no proper ground for the issuance of the warrant, inasmuch as the violation set forth, or the alleged violation set forth in the affidavit had occured prior to the time of the first raid. Now, it has been urged that only the person, the owner of the property seized, could complain, and I submit that if there was no ground for [157] the issuance of the warrant and the seizure was unlawful thereby,

(Testimony of Stephen V. Keveney.)

the evidence would not be admissible as against any, because the evidence was unlawfully obtained.

The COURT.—Such, of course, is not the rule.

Mr. SMITH.—It is the rule, as I understand it.

The COURT.—The motion is denied.

Mr. SMITH.—Note an exception.

The COURT.—I am obliged to take an adjournment until a little later to-day, so we will take our adjournment until 2:15.

Mr. SMITH.—Before adjourning I would like to have the jury instructed at this time that all of the evidence must be disregarded as concerned the defendant Birdsall.

The COURT.—The testimony in regard to the raid of October 3d will be disregarded so far as Birdsall is concerned. That does not apply to the raid of October 2, but only October 3d. It may be considered by you, however, as to the other defendants.

(R. Tr. Vol. 2, pp. 76–81, inc.)

TESTIMONY OF STEPHEN V. KEVENEY, FOR THE GOVERNMENT (RECALLED FOR FURTHER CROSS-EXAMINATION).

(By Mr. O'CONNOR.)

I did testify before the Federal Grand Jury in this matter. At that time I did not sign any waiver of immunity from prosecution.

(R. Tr. Vol. 2, p. 82.)

TESTIMONY OF W. F. WHITTIER, FOR THE GOVERNMENT (RECALLED FOR DIRECT EXAMINATION).

(By Mr. GILLIS.)

I was present at 1249 Polk Street on October 3, 1924.

Q. Did you make a search of the premises there at that time? [158]

Mr. SMITH.—At this time I will object to any testimony that might be given with reference to what occurred at 1249 Polk Street on October 3, for the reason that the entry into the premises was made by reason of a warrant that never should have been issued. The grounds as stated in the warrant show an alleged violation, that is, the affidavit upon which the search-warrant was issued shows an alleged violation that took place on the 27th of September at that place, and thereafter, on [159] October 2d, a warrant was issued to search the place, and that warrant was executed on the 3d; that no violation had occured on the premises, so far as the record discloses, since the place was raided on October 2d, and therefore there were no grounds that would justify the issuance of the warrant. I make the objection on behalf of the defendant Marron, the evidence having been already excluded and suppressed as to the defendant Birdsall.

The COURT.—The objection is overruled.

Mr. SMITH.—Exception.

(Testimony of W. F. Whittier.)

Mr. O'CONNOR.—May that also go to the defendant Mahoney and an exception noted?

The COURT.—Yes.

A. We did.

The WITNESS.—(Continuing.) At that time I found two bottles of port wine, one bottle of port wine three-quarters full, one bottle of whiskey, one bottle one-third full of whiskey, one bottle containing two ounces of whiskey, a bottle three-quarters full of brandy, one bottle one-half full of Scotch whiskey, one bottle one-third full of Vermuth, two bottles of gin, one one-gallon bottle three-quarters full of gin, one bottle of Bocardi rum, one bottle Bocardi rum nearly full, two sacks of Canadian beer. (A bottle numbered 27999, marked "United States Exhibit 9 for Identification" was here shown to witness.) This bottle was secured by me at that time and at that place, and was delivered to the United States Chemist. (A bottle numbered 28000, marked "United States Exhibit 10 for Identification" was here shown to witness.) I secured this bottle at that time and place and it was delivered to the United States Chemist. (A bottle numbered 28001, marked "United States Exhibit 11 for Identtification" was here shown to witness.) This bottle was secured at that time and place, and was delivered to the United States Chemist. (A bottle numbered 28002, marked "United States Exhibit [160] 12 for Identification" was here shown to witness.) I secured this bottle at that time and place, and I delivered

(Testimony of W. F. Whittier.)

it to the United States Chemist. (A bottle numbered 28003, marked "United States Exhibit 13 for Identification" was here shown to witness.) I secured this bottle at that time and place, and delivered it to the United States Chemist. (A bottle numbered 28004, marked "United States Exhibit 14 for Identification" was here shown to witness.) I secured this bottle at that time and place, and I delivered it to the United States Chemist.

Q. What part of the flat did you particularly search? A. I was all through the flat.

Q. Did you see any slot machines?

Mr. SMITH.—Just a second; we will object to that on the ground that it is immaterial, irrelevant and incompetant, has nothing to do with the charge laid in the indictment.

The COURT.—I don't know that it has, Mr. Gillis.

Mr. GILLIS.—It shows, if nothing else, the character of the place.

The COURT.—I think you have sufficiently established that it was not a residence, and that is all that is necessary.

Mr. GILLIS.—The contention of the Government is, of course, that this was run as a bootlegging place, where they were regularly dispensing liquors. I want to show the furniture there.

Mr. SMITH.—We object to the remark of counsel for the Government, because I do not think that is a proper remark at this time to be addressed to the Court in the presence of the jury.

(Testimony of W. F. Whittier.)

The COURT.—I cannot see any objection to it.

Mr. SMITH.—We note an exception.

The COURT.—He is stating the contention of the Government.

Mr. GILLIS.—I want to show what furniture and different things were in there. [161]

The COURT.—I will let it in. I do not see that it is of much importance.

Mr. SMITH.—Note an exception.

Mr. GILLIS.—Answer the question. A. I did.

The WITNESS.—(Continuing.) There was a slot machine in the kitchen alongside of the cash register, and in the room adjoining, or alongside the kitchen, was one, and in each one of the front rooms there was one, four altogether that I remember. I arrested a man who gave his name as Charles Clark on that evening, who afterwards we found out was named Mahoney, one of the defendants in this case.

Q. I show you a slip of paper, and ask you to examine that, without making any comment on it. Do you recognize that, Mr. Whittier? A. Yes.

Q. Where did you secure that? Where did you get that?

A. In one of the rooms at 1249 Polk Street.

Q. On October 3d? A. Yes.

Mr. GILLIS.—I now ask that this be introduced in evidence and marked a Government exhibit.

Mr. SMITH.—To which we object on the ground that it demonstrates nothing. If the purpose of the Government is to show that it is a record of something, I submit that it is not the best evidence.

Furthermore, it is not covered by the warrant. The contention of the defendants Birdsall and Marron is that if this was seized it was seized in excess of the powers given to the agents under the warrant; it is not described in the warrant, and it is not authorized by the search-warrant.

The COURT.—I assume, Mr. Gillis, that it would have to be identified by the proper official as being what it purports to be. I doubt very much if a thing of this kind would speak for itself. [162]

Mr. GILLIS.—Would not that go to the weight of the instrument, or to the weight of the evidence?

The COURT.—I do not think so. I think it goes to the identification of the piece of paper. I think you had better bring a proper official here and have him identify that. You may mark it for identification.

Mr. O'CONNOR.—We object to it on behalf of the defendant Mahoney on the ground that no foundation has been laid for its introduction, even for identification.

The COURT.—Objection sustained. You may mark it for identification.

Mr. GILLIS.—The objection that Mr. O'Connor made was to its being introduced for the purpose of identification.

Mr. O'CONNOR.—I will withdraw that objection. I thought you offered it in evidence.

The COURT.—Mr. Smith, have you any doubt that is what it purports to be?

Mr. SMITH.—Yes, I have. My information is

(Testimony of W. F. Whittier.)

that the condition is contrary to what is shown by the paper.

(A document is here shown to the witness and is marked "United States Exhibit 14 for Identification.")

Said exhibit was and is in the following words and figures:

(Here insert exhibit.)

Mr. GILLIS.—Q. I show you another piece of paper, Mr. Whittier, and ask you to examine that without comment.

Mr. O'CONNOR.—The same objection as to the defendant Mahoney.

Mr. GILLIS.—Q. Do you recognize that, Mr. Whittier? A. I do.

Q. Where did you get that?

A. The same room. [163]

Q. You mean by that at 1249 Polk Street?

A. 1249 Polk Street.

Q. On October 3d? A. On October 3d.

Mr. GILLIS.—I ask that that be introduced for the purpose of identification.

(A document is here shown to the witness and marked "United States Exhibit 15 for Identification.")

Said exhibit was and is in the following words and figures:

(Here insert exhibit.)

Mr. GILLIS.—Q. I believe you have testified, Mr. Whittier, that you were there on October 2d, also? A. I did.

(Testimony of W. F. Whittier.)

Q. I show you another sheet of paper and ask you if you recognize that, without any comment? Just look at it first without answering the question. Do you recognize that sheet of paper, Mr. Whittier?

A. I do.

Q. Where did you find that?

A. In the gray book.

Q. That was seized on October 2d?

A. On October 2d.

Q. At 1249 Polk Street? A. Yes.

Q. You say it was in the gray book?

A. Yes, laying loose.

(A document was here shown to the witness, and was thereupon introduced in evidence as United States Exhibit 16 for Identification.)

Mr. O'CONNOR.—Objected to on behalf of the defendant Mahoney as irrelevant, immaterial and incompetent and no foundation laid for its introduction in evidence.

Mr. SMITH.—As far as the defendants Marron and Birdsall are concerned, we will object to its introduction upon the ground that no foundation has been laid, that there is no [164] identification of the particular instrument, that there is nothing to show that what appears on it is authentic, or that it represents any particular thing in connection with this particular case, and, in addition thereto, it is not one of the things that was authorized to be seized by virtue of the search-warrant that was issued on that date, and was seized in excess of authority.

(Testimony of W. F. Whittier.)

The COURT.—Overruled.

Mr. SMITH.—Exception.

(The document was thereupon introduced in evidence and marked "United States Exhibit 16.")

Said exhibit was and is in the following words and figures, to wit:

(Here insert exhibit.)

Mr. O'CONNOR.—An exception also for the defendant Mahoney.

Mr. GILLIS.—I show you five small slips of paper and ask you to look at them without comment.

Mr. SMITH.—We will offer the same objection that has been offered heretofore with reference to other papers and records that have been seized there.

Mr. GILLIS.—Q. Do you recognize these, Mr. Whittier? A. I do.

Q. Where did you get these?

A. Out of the book.

Q. When you refer to the book, you mean the gray book, Government's Exhibit 3?

A. That is it.

Q. And they were in this book when you first saw them? A. Yes.

Mr. SMITH.—May it please the Court, as I have stated, I do not want to clutter up the record with a lot of unnecessary objections, but it looks as though Mr. Gillis is testifying instead of the witness. I will object to the question on the ground that it is leading and suggestive, both.

(Testimony of W. F. Whittier.)

The COURT.—The objection is overruled. [165]

Mr. SMITH.—Note an exception.

(The documents were here introduced in evidence as "United States Exhibit 17.")

Said exhibit was and is in the following words and figures, to wit:

(Here insert exhibit.)

Mr. GILLIS.—Q. When you have referred to the gray book in your previous testimony, Mr. Whittier, you refer to this book that I have now in my hand, Government's Exhibit 3? A. Yes.

Mr. SMITH.—We object to their introduction in evidence on the grounds heretofore urged on behalf of the defendants Marron and Birdsall.

The COURT.—The same ruling.

Mr. SMITH.—Exception.

Cross-examination.

(By Mr. O'CONNOR.)

The man that I arrested gave the name of Charles Clark. After I put him under arrest I first let him ring up Mr. Smith, and then took him to the Bush Street Police Station and booked him for violation of the National Prohibition Act, I believe. I left the defendant there. I took the liquor to the evidence box. It was about 5:15 that day that I seized the liquor. We stored the liquor that night at the evidence box in the Appraisers Building. I believe it was turned over to the chemist the next morning by one of the agents. I am not

(Testimony of W. F. Whittier.)

sure that I did not turn it over. I would not state that.

Cross-examination.

(By Mr. SMITH.)

I am Agent Whittier who executed the search-warrant on October 2, 1924, at those premises, and I am the agent who executed the search-warrant at those premises on October 3. [166]

Mr. SMITH.—Mr. Whittier, I hand you a paper and will ask you if that is a copy of the search-warrant that you left at 1249 Polk Street on October 3? A. Yes.

The WITNESS.—(Continuing.) In addition to the articles enumerated on the reverse side, I seized some papers. I did not enumerate those papers.

Mr. GILLIS.—I think the record on the back of the search-warrant is the best evidence.

The COURT.—It speaks for itself. Objection sustained.

Mr. SMITH.—Q. Was there any reason why you did not enumerate the papers?

Mr. GILLIS.—I think that is objectionable, immaterial and irrelevant.

The COURT.—Objection sustained.

Mr. SMITH.—At this time I would like to offer this warrant in evidence, and ask that it be given the appropriate number of the defendants Birdsall and Marron.

Mr. O'CONNOR.—May it be understood as being offered as to the defendant Mahoney also?

The COURT.—Yes.

(Testimony of W. F. Whittier.)

(Thereupon the document was introduced in evidence and marked Defendants' Exhibit "B.")

Said exhibit was and is in the following words and figures:

(Here insert exhibit.)

Mr. SMITH.—Q. You did not list any papers that you seized on October 2d as having been seized at that address, did you, on the search-warrant?

A. No.

Q. Your search-warrant did not call for those papers, did it?

Mr. GILLIS.—The search-warrant is the best evidence of what [167] is on there, and I object on that ground.

The COURT.—Objection sustained.

Mr. SMITH.—That is all. At this time I will ask, may it please the Court, that the jury be instructed to disregard all of the testimony given by Agent Whittier as to what occurred at these premises on October 3d, as to the defendant Birdsall.

The COURT.—The motion is denied.

Mr. SMITH.—The motion is denied as to the defendant Birdsall? There has been an order suppressing the evidence.

The COURT.—Yes, the motion is granted.

(R. Tr. Vol. 2, pp. 82–92, inc.)

TESTIMONY OF ROBERT A. COULTER, FOR THE GOVERNMENT.

ROBERT A. COULTER, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

My occupation is a Captain of Police, San Francisco Police Department, assigned to duty at the Western Addition Station. On the 26th of August, 1924, I communicated with the Prohibition Department of this city.

Q. What caused you to communicate with them?

Mr. SMITH.—We will object to that on the ground that it is immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. SMITH.—Note an exception.

The WITNESS.—(Continuing.) At about 10 A. M. on August 26, 1924, Police Officer Hicks, a member of my command, telephoned to me at the Western Addition Station. I received a report from [168] one of my officers, and thereafter I communicated with the Prohibition Department, calling Mr. Paget. Thereafter I went to 3047 Sacramento Street.

Q. Sacramento or California? A. California.

The WITNESS.—(Continuing.) The premises were occupied by one William F. Curran.

Q. What did you find or see when you arrived there?

(Testimony of Robert A. Coulter.)

Mr. O'CONNOR.—I move that this testimony be stricken out as to the defendant Mahoney on the ground it is immaterial, irrelevant and incompetent, in no way connected with the conspiracy charged, and not binding on him.

The COURT.—This is merely preliminary.

Mr. O'CONNOR.—I appreciate that.

The COURT.—There is nothing here so far that affects us, but I cannot anticipate that. The motion will be denied.

Mr. O'CONNOR.—Exception.

The COURT.—You may answer.

The WITNESS.—(Continuing.) I found a large quantity of liquor contained in the garage underneath his residence.

Mr. O'CONNOR.—I renew my objection.

Mr. GILLIS.—Have you a list of the liquor that you seized?

The COURT.—The objection will be overruled. I assume that this will be connected in some way with the defendants.

Mr. GILLIS.—I tell the Court at this time that I will connect this up with the defendants in this action.

The COURT.—The motion is denied.

Mr. O'CONNOR.—Exception.

The WITNESS.—(Continuing.) In the garage at this time there were 398 sacks containing what we presumed to be beer, 21 sacks presumed to contain whiskey, 7 sacks of whiskey partly filled, 11 cases of whiskey, three cases of champagne, three cases of

(Testimony of Robert A. Coulter.)

[169] champagne partly filled, two barrels of wine, one barrel of wine part full.

Mr. SMITH.—I am going to object to the testimony upon the ground that it has been shown that the premises were entered lawfully, or that the officers were lawful in the premises.

The COURT.—It doesn't make any difference. It was seized by the State officers.

Mr. SMITH.—He has not testified he seized it.

The COURT.—The entry was made by State officers. Go ahead, the objection is overruled.

Mr. SMITH.—Note an *objection.*

The WITNESS.—Shall I continue with the description of the property taken?

Mr. GILLIS.—Yes.

The WITNESS.—(Continuing.) Two barrels of brandy, two part full barrels of brandy, one 50-gallon tank of alcohol, one 5-gallon jug of wine part full, two 20-gallon stills, and an empty barrel.

Q. Did you seize the liquor at that time?

A. No, we entered the premises for the purpose of making a sanitary inspection. When we found that the liquor was contained therein we called the Federal Prohibition Agents, who were on the outside of the building, to enter, Federal Agents Shurtleff and William F. Gwynn. The owner of the property was William Curran. He admitted us into the alleyway, for the purpose of making a sanitary inspection.

Q. Now, I will ask you, Captain Coulter, if on September 2, 1924, you had occasion to communicate

(Testimony of Robert A. Coulter.)

with the Prohibition Department of this city, National Prohibition forces? A. On what date?

Q. On September 2d? A. No, I did not. [170]

Q. What date did you on or about that time?

A. September 3d.

Q. On September 3d? A. Yes, 1924.

The WITNESS.—(Continuing.) On September 2, about 7:20 P. M., I was attending a meeting of the Board of Police Commissioners at the Hall of Justice, when I was communicated with by one of the officers of my company, who informed me that he had been informed by—

Mr. SMITH.—We will object to that.

Mr. GILLIS.—Q. Without stating what the information was, you received certain information from one of the officers of your company?

A. Yes.

Q. Did you issue any orders upon that report from your officer? A. I did.

Q. What were those orders?

Mr. O'CONNOR.—I object to that on the ground it is hearsay and not binding upon any of these defendants.

The COURT.—You can state it generally. Objection overruled.

Mr. O'CONNOR.—Exception.

Mr. GILLIS.—Q. You were acting in your official capacity as a Captain of Police in charge of that district at that time?

Mr. O'CONNOR.—That is objected to on the ground that it is leading and suggestive.

(Testimony of Robert A. Coulter.)

The COURT.—Overruled.

Mr. O'CONNOR.—Exception.

A. I was.

Mr. GILLIS.—Q. Now, I will ask you what orders were issued by you?

Mr. SMITH.—That is objected to on the ground that it is immaterial, irrelevant and incompetent, and whatever orders were issued are not binding on any of these defendants, hearsay as to them. [171]

The COURT.—Overruled.

Mr. SMITH.—Exception.

The WITNESS.—(Continuing.) I communicated with the Platoon Commander at the Western Addition Station, and ordered him to blockade these premises and to permit nothing to be taken in or out of the same until the following morning.

Mr. GILLIS.—Q. What premises were those?

A. 2922 Sacramento Street.

The COURT.—This was a different place from the one you spoke of before?

A. Yes.

Mr. GILLIS.—Q. Now, on September 3d did you communicate with the Prohibition Department of this city?

A. Yes, I notified Federal Agent Rinckel.

Q. Did you go to 2922 Sacramento Street?

A. No, I did not.

Mr. GILLIS.—That is all.

Cross-examination.

(By Mr. SMITH.)

Q. Captain, you stated on direct examination that

(Testimony of Robert A. Coulter.)

you entered the premises at 3047 Sacramento Street for the purpose of making a sanitary inspection. Is that correct?

A. No. 3047 California Street.

Mr. SMITH.—Q. 3047 California Street, for the purpose of making a sanitary inspection. Is that correct? A. Yes.

Q. Had you received word that the place was in an unsanitary condition, that anything was wrong with the plumbing, or that a sanitary inspection was advisable?

Mr. GILLIS.—Objected to on the ground it is immaterial and irrelevant.

The COURT.—I will allow it. [172]

A. No, I did not.

Mr. SMITH.—Q. Is it not a fact, Captain Coulter, that the sanitary inspection was only a subterfuge to gain entrance to the premises?

A. That is all.

Q. Now, is it not a fact that you did not enter the premises proper, but you only went into the runway and peered into the basement of the building?

Mr. GILLIS.—That is asking for a conclusion.

The COURT.—You say he did not enter the premises properly?

Mr. SMITH.—He did not enter the premises themselves proper, he was on the outside of the premises; you understand.

Mr. GILLIS.—It calls for the conclusion of the witness. Let him state the facts.

The COURT.—I think that is what he is asking

(Testimony of Robert A. Coulter.)

for. He is asking what part he went into. I thought you said "properly."

A. We did enter the garage.

Mr. SMITH.—Q. You entered the garage. How did you first enter the premises, Captain?

A. The runway or the garage proper?

Q. When you first went to the premises, what happened when you first went to the door?

A. We went to the front door and rang the bell, and the owner of the premises asked for what purpose we were there, and we told him.

Q. What did you tell him?

A. We wanted to make a sanitary inspection of his premises, and investigate what was in his garage.

Q. What did you do after you entered the premises?

A. We entered the runway, and through a hole which had been knocked in the side of the basement proper, we entered the garage, where these liquors were contained. [173]

Q. You did not seize any liquors, did you, Captain? A. No.

Q. Your men did not seize any liquor, did they?

A. None whatever.

Q. The only property that was seized there was seized by the Prohibition Officers?

A. That is all.

Q. Whom did you talk to when you called up the Prohibition Department? A. Paget.

(Testimony of Robert A. Coulter.)

The WITNESS.—(Continuing.) I had a conversation with Mr. Paget and advised him of the phone call I received from the officer on the beat, to the effect that the officer had witnessed what he presumed to be a truckload of liquor being taken away from this address, and that the odor of liquor was very noticeable coming from this basement.

Mr. O'CONNOR.—That is objected to on behalf of the defendant Mahoney, on the ground that it is hearsay.

Mr. GILLIS.—They asked for it.

The COURT.—I suppose one defendant can object to what another puts in. I will overrule the objection.

Mr. O'CONNOR.—Exception.

The WITNESS.—(Continuing.) Paget asked me if we knew there was liquor on the premises, and I advised him that was the information we received from Officer Hicks.

Q. Purely information up to this time. You had no knowledge. A. None whatever.

Q. Mr. Paget gave you some instructions, did he not? A. Oh, no.

Q. Did he give you any instructions?

A. No instructions.

Q. Did he suggest what you should do?

A. None whatever.

Q. What did he tell you he would do, if anything?

A. He said, "Well, I am very glad to co-operate

(Testimony of Robert A. Coulter.)

with you; I will send out a couple of my men." I said, "That is all we want." [174]

Q. All right. What followed then?

A. The men arrived in an automobile about the time of my arrival, and they remained out on the sidewalk, and we made our request for an entrance from the owner of the premises, and we entered the runway, and saw the liquor, saw the goods which we presumed to be liquor, and upon the strength of that I advised the Federal Officers to come in and take possession, which they did.

Q. During the entire time from the time that you talked to Mr. Paget, you and the Federal Prohibition Department were co-operating with one another?

Mr. GILLIS.—To which I object as calling for the conclusion of the witness. Let us have the facts.

The COURT.—The objection is sustained. You may ask him however, just exactly what they did and said to one another.

Mr. SMITH.—Q. Captain Coulter, after the arrival of the Prohibition Officers on the scene—you say they arrived on the scene about the same time as you? A. Yes.

Q. What was said by the officers to you, and what did you say to them, and what was done by them?

A. Well, upon their entrance to the garage, we looked over the property contained therein, and I advised them that we had no further jurisdiction

(Testimony of Robert A. Coulter.)

in the matter, that the seizure of the liquor was strictly up to them, but I would leave an officer there to take a memorandum for my information, showing what was taken out of that garage that day; that report was submitted to me by one of the officers, the report of which I have given to you.

Q. With reference to the seizure of this property you had nothing to do other than what you have stated? A. That is all. [175]

Q. The entire seizure was made by the Prohibition Officers. Is that correct? A. Yes.

Mr. GILLIS.—I object to that as calling for the conclusion of the witness. Let the facts speak for themselves.

The COURT.—I suppose that calls for a fact. He is asking him, in effect, what was done with regard to taking the liquor, I will allow the question.

Mr. SMITH.—Q. You never at any time took this liquor into your custody, did you?

A. What is that?

Q. You never at any time took this liquor into your custody, did you? A. No.

Q. You never exercised any control over it?

A. None whatever.

Q. Mr. Paget remarked, as you say, that he was very glad that you were co-operating with him?

A. He would be very glad to co-operate with me in the matter.

(Testimony of Robert A. Coulter.)

Q. Thereafter, whatever was done was done by the Prohibition Agents? A. Everything.

Mr. SMITH.—That is all. Now, may it please the Court, I will ask that the entire testimony be stricken out on the ground that the entrance to the place was unlawful.

The COURT.—Have you read the decision of this morning?

Mr. SMITH.—I read the newspaper account, but I have not read the opinion.

The COURT.—I have seen it. I think we had better see it now. Have you seen it, Mr. Gillis?

Mr. GILLIS.—No.

The COURT.—The Court of Appeals handed down a decision upon this identical question in the case of Slim Forni.

Mr. SMITH.—I don't know what the opinion is.

The COURT.—I think we had better get it. I will be glad if you will get it for me, Mr. Gillis. We will take a short [176] recess.

The COURT.—What are these premises?

A. Residence.

Q. What does it consist of?

A. Well, I would say a six-room house with a garage underneath.

Q. The garage is right underneath the house, is it? A. Directly underneath.

Q. The door for the entrance of automobiles is from the street?

A. From the street.

(Testimony of Robert A. Coulter.)

Q. Is there any other entrance to the garage except through the front door, where the automobiles go in and out?

A. That was the only entrance except the one we entered through that had been busted through.

Q. Where was it you said that was?

A. That was on the runway.

Q. Where was the runway?

A. On the left of the house.

Q. What was the runway for?

A. To go into the rear of the premises, that is what is ordinarily called an alleyway, running the entire length to the back stairs.

Q. You went up the front steps, did you?

A. Yes.

Q. Rang the bell? A. Yes.

Q. What was the name of the owner?

A. Curran.

Q. Did Curran live there?

A. He answered the doorbell.

Q. Did you observe whether or not it was a dwelling-house, that is, was there furniture of a dwelling-house in there?

A. We did not enter, no; he held the door just partly open and conversed with us through the opening.

Q. Did he tell you how to get into the garage?

A. No, he said he had a key to the garage. He did have a key to the runway, and he would try to find it, and he returned in possibly five or ten min-

(Testimony of Robert A. Coulter.)

utes afterwards with the key to the door leading into the runway and admitted us there.

Q. That was a door in a wall?

A. Yes, entirely closed; that [177] was our only way of entrance.

Q. When you saw this liquor, could you tell what it was, at all?

A. No, we could not determine what it was.

Q. Was it in boxes and sacks?

A. Yes, the sacks were packed up, and barrels and cases, some partly open; you could see the necks of bottles sticking up here and there; it was the odor that led us to believe that it contained liquor.

Q. Could you see any of the labels on the boxes?

A. No—you mean telling what they contained?

Q. I mean labels on the boxes, indicating whether the liquor was imported or not?

A. Some of the champagne boxes were burned in with the customary label.

Q. Could you tell that was imported?

A. Apparently so.

The COURT.—The Court of Appeals, gentlemen, in the Forni Case, in its decision, uses this language: "Under the facts we think the only reasonable inference was that the garage was used for a business purpose, the storage of a large quantity of contraband liquor. The possession of cases of liquor which bore no evidence of having been through the Custom House or stamped, was *prima facie* evidence that the liquor was being kept for pur-

(Testimony of Robert A. Coulter.)

poses of sale." In the Forni Case, however, there was a search-warrant, Mr. Gillis. I think this is a very doubtful proposition.

Mr. GILLIS.—Q. You say the owner had no key to the garage? A. No.

Q. Did you get any information as to who had the key?

Mr. SMITH.—We will object to that on the ground it is hearsay.

The COURT.—I should think so. You mean information from the man who was there?

Mr. GILLIS.—From any place. [178]

The COURT.—I presume that the man who was in charge there, if there was a conspiracy, would be a co-conspirator. Objection overruled. He may answer.

Mr. SMITH.—That man is not charged as a co-conspirator.

The COURT.—What is the difference? The principle is well settled, where a conspiracy is charged, there may be proof offered in regard to the persons charged, or anybody else.

Mr. SMITH.—Note an exception.

The COURT.—You may answer.

A. The owner of the premises denied having any keys to the garage proper. He did admit that he had the key to the gate leading into the alleyway alongside.

Mr. GILLIS.—Q. Did he say who had the key to the garage?

A. I did not ask him that question.

(Testimony of Robert A. Coulter.)

Q. Did he say who had leased the garage from him?

Mr. SMITH.—Just a second, we object to that on the ground it is immaterial, irrelevant and incompetent, and purely hearsay.

The COURT.—Overruled.

Mr. SMITH.—Exception.

A. He did.

Mr. GILLIS.—Q. Who did he say leased the garage from him?

A. He reported he leased the garage to a man named Marron, who resided on Steiner Street.

Q. Did you see a hole in the rear of that garage, or in the side of it any place?

A. Yes, on the side wall.

Q. What kind of a hole was that, Captain?

A. Well, it appeared to be a breaking out of the wall.

Mr. SMITH.—We will object to that on the ground that it calls for a conclusion and opinion of the witness as to what kind of a hole it appeared to be.

The COURT.—He has described the hole. That is proper enough. [179] Overruled.

Mr. SMITH.—Exception.

A. The hole possibly was 3 by 3, 3 feet by 3, and enough to admit a person without tearing his clothes.

Mr. GILLIS.—Q. Did the hole have the appearance of being sawed out clean?

A. Oh, no; very jagged.

(Testimony of Robert A. Coulter.)

Q. As though it had been broken

A. Forcibly broken from the inside.

Q. Did you see any liquor in the back yard?

A. I did not.

Q. Did you see anybody going through the back yard? A. No.

Q. When you gained admission to the garage, you went in through the hole that had been made there? A. The hole in the wall.

The COURT.—Q. Did you have any talk with this man after the liquor was found, Captain?

A. No. As soon as the prohibition authorities took possession, I left the scene immediately and did not return.

The COURT.—I will reserve the ruling, Mr. Smith, I am not clear about it. I will reserve it until this evidence of the prohibition officer is here. Go ahead with the cross-examination.

Mr. SMITH.—I am through.

The COURT.—Any further questions, Mr. Gillis?

Mr. GILLIS.—That is all.

(R. Tr. Vol. 2, pp. 92–104, inc.)

TESTIMONY OF WILLIAM F. CURRAN, FOR THE GOVERNMENT.

WILLIAM F. CURRAN, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I reside at 3047 California Street. My wife and I have an interest in that property. There is a

(Testimony of William F. Curran.)

mortgage upon it. We have been living there a little over three years. [180]

Q. In January of 1924, did you make any addition to your house, put on a garage?

Mr. SMITH.—Objected to on the ground that it is immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. SMITH.—Exception.

A. I put in a garage in the early part of the year. I could not say just what month it was, but I guess it was in January.

The WITNESS.—(Continuing.) The early part of January I built it to rent to anyone who would pay the most money for it. Mr. Marron rented it from me, Eddie Marron, one of the defendants in this case. He rented it from me as soon as it was completed. I could not tell exactly; early part of the year.

Q. How much rent did he pay you for it?

Mr. SMITH.—Objected to on the ground it is immaterial, irrelevant and incompetent.

The COURT.—Objection overruled.

Mr. SMITH.—Exception.

A. Well he paid $50 a month for about three months, and afterwards $25.

Mr. GILLIS.—Q. Did he state what he wanted it for?

Mr. SMITH.—Objected to on the ground it is immaterial, irrelevant and incompetent.

The COURT.—Objection overruled.

Mr. SMITH.—Exception.

(Testimony of William F. Curran.)

A. Yes, he wanted to store some stuff in there.

The WITNESS.—(Continuing.) He did store some stuff in there. I saw it when it was taken out. It looked like liquor to me, in packages. I knew it was liquor that he was storing in there. He rented the place from me until it was raided. I think it was in August. I saw him go in and out of the garage sometimes— [181] a few times.

The COURT.—Q. Was he taking liquor in and out when you saw him?

A. I never saw him take any in there.

Q. You saw him take it out?

A. I didn't know what he would take out. He would drive in and out. I could not tell you what he took out.

Q. He drove his car right into the garage, and drove right out again? A. Yes.

Q. You knew, I suppose, that it was liquor, didn't you?

A. I could not tell, only what I suspected.

Q. Did you smell it?

Mr. SMITH.—I ask that that go out as immaterial, irrelevant and incompetent.

The COURT.—Yes, strike that out "what I suspected."

Q. Did you smell it? A. No, I didn't.

Q. How did the hole happen to be there in the wall on the side of this little runway?

A. There used to be a little door in there.

Q. Do you know how that was smashed out?

A. It was broken out the day of the raid.

(Testimony of William F. Curran.)

Q. The day of the raid? A. Yes.

Q. By whom?

A. I don't know. I could not tell you.

The WITNESS.—(Continuing, to Mr. Gillis.) I saw Mr. Marron the day of the raid. He was at the premises. I think he was in the garage. I saw him just before the police officers came. I saw him at the time the police officers were there. He came there while they were there.

Mr. SMITH.—We will object to that on the ground that it is assuming something that is not in evidence. This witness has not testified that he saw him doing anything.

The COURT.—Overruled. [182]

Mr. SMITH.—Exception.

A. Well, he was talking to the police officers, and the policemen told me I had better go upstairs and get out of sight, because Rutter's men were coming, so I did, so I don't know what he did.

Mr. GILLIS.—Q. You didn't see him after that?

A. No.

Cross-examination.

(By Mr. SMITH.)

When the police came to my door my wife opened the door first, and they told her they had a report that the place was unsanitary, and wanted to inspect it. They told me the same thing afterwards. I was in the yard at the time, and they came through the house, and my wife called me and I came up, and they said they had a report of the place being unsanitary, so she opened the door and

(Testimony of William F. Curran.)

let them walk through, and she opened the door for the bath and toilet so they could see. She said they did not seem to pay much attention to it at all, passed right through to the back, went clear through to the back. Then they went out the front door again, and then asked me to open the garage, and I told them that I didn't have a key, I could not open it. My wife said the officers walked right through. They didn't seem to look to the right or to the left. They seemed to want to inspect the garage more than anything else. I occupy the place as a private dwelling, myself and my wife.

The COURT.—The motion made to strike out the evidence of Captain Coulter, of course, must now be denied. While it is true that no officers of the law, either prohibition officers, or police, either, have the right to enter any part of a private dwelling in a search for liquor, unless there is evidence of sales [183] having taken place there, and it is probably also true that a garage is part of the private residence, but it ceases to be a part of the private residence when it is rented for the express purpose of storing liquor. The motion, therefore, will be denied.

Mr. SMITH.—We note an exception, may it please the Court, and I want further to urge, may it please the Court, in support of my motion to strike out the evidence given by Captain Coulter, the fact that the officers had no right to enter any business place, regardless of what was stored there, without a warrant; simply because a place is a

business place, that is no reason why anyone, particularly a police officer or a prohibition agent, might walk in. A home isn't the only place, as I understand the law.

The COURT.—No, but you see you come to an entirely different proposition there. You come then to the proposition that they had reasonable cause to believe that a crime was being committed there, and the evidence there so indicated. Captain Coulter testified there was a strong odor of liquor there, and they looked through and saw the liquor. That is a very different proposition. Of course, the purpose of the prohibition law in regard to a man's home is that he has a right to have there lawfully acquired liquor for the *bona fide* use of himself and his guests, and he has a right to keep it in his garage, or any other part of his place that he pleases. But immediately upon his renting any part of his premises to somebody else for the storage of liquor, it ceases to be any part of his home, and cannot possibly be liquor for the *bona fide* use of his guests, for the simple reason that he has no control over it, or anything to do with it. Now then, it becomes, as the Court of Appeals said in that Forni case, a place of business, and therefore, if the evidence of their senses were such that it indicated [184] there was liquor there, they had a right to enter.

Mr. SMITH.—The Court is assuming, I take it, for the purpose of the ruling, that all of these facts were known to the officers at the time that they entered. It developed by the testimony that the offi-

cers had to ask questions to find out what the true state of facts were; they did not know who this property belonged to at the time that they entered and they had no idea who it belonged to, until they asked questions in order to find out.

The COURT.—I am quite clear about it.

Mr. SMITH.—As far as the Forni matter is concerned, that is purely the proposition of a search-warrant.

The COURT.—Yes, there was a search-warrant, but the opinion of the Court covers it.

Mr. SMITH.—The Forni matter simply goes to the sufficiency of the averments in the affidavit for the purpose of having issued thereon a search-warrant.

The COURT.—The motion is denied.

Mr. SMITH.—Note an exception.

Mr. TAAFFE.—I want the Government at this time to enter into a stipulation with reference to Captain Coulter and Mr. Curran, the witnesses on the stand, in using the word promiscuously of police officers—did not in their testimony refer to either of the defendants Kissane or Gorham, that are now on trial.

Mr. GILLIS.—I don't know what you mean.

Mr. TAAFFE.—Captain Coulter said that his men, his police officers, had assisted in making some sort of a raid, and Mr. Curran said the police officers had informed him that he had better go upstairs, because the prohibition agents were coming. We want a stipulation that that testimony did not

(Testimony of E. O. Vaughan.)

refer to either of these defendants on trial as being the police officers that were there present. [185]

Mr. GILLIS.—At that time?

Mr. TAAFFE.—Yes.

Mr. GILLIS.—There is no claim on behalf of the Government that either the defendant Kissane or Gorham were present at this particular raid.

Mr. TAAFFE.—That is all we want.

(R. Tr., Vol. 2, pp. 105–111.)

TESTIMONY OF E. O. VAUGHAN, FOR THE GOVERNMENT.

E. O. VAUGHAN, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am, and for about twenty years last past have been, an accountant. I know Mr. Birdsall, one of the defendants in this action. I have known him probably two or three years. In the early part of 1924 I had occasion to visit 1249 Polk Street. I saw Mr. Birdsall there at the time. I had a conversation with him with reference to the accounts that he was keeping there at the time. He asked me to add up the books for him. (The attention of the witness was here directed to United States Exhibit 3)

Mr. SMITH.—We will object to all this testimony on the ground that it is improper under the Gouled decision; the Gouled case goes directly to the point that I am making now, that is a man's

(Testimony of E. O. Vaughan.)

record cannot be used against him in a criminal proceeding, any more than he would be compelled to testify against himself, because in either event he would be the unwilling source of evidence as against himself. The Supreme Court has passed [186] directly upon that point, and I respectfully urge it at this time.

The COURT.—Overruled.

Mr. SMITH.—Exception.

The WITNESS.—(Continuing.) I recognize this book.

(The attention of the witness was here directed to United States Exhibit 16.)

The WITNESS.—(Continuing.) Yes, I recognize Government's Exhibit 16. The handwriting on this is mine. I made that summary.

Mr. SMITH.—That is objected to upon the ground that it is immaterial, irrelevant and incompetent.

The COURT.—Overruled.

The WITNESS.—(Continuing.) United States Exhibit 16 was made from United States Exhibit 3. I first began keeping the account or keeping the summary about the early part of March. The February totals are my figures. From that time until the end of September, or until the September statement, I think I made the summary from the book each month. The first item on page 86 is June. At the top of the page, the name "Vaughan" is my name. The item "$10" was made by me. That was my monthly charge for making this up.

(Testimony of E. O. Vaughan.)

(The attention of the witness was here directed to three cross-marks on page 81, opposite which are the figures $170, and the witness was directed to explain the significance of the three cross-marks.)

Mr. SMITH.—We will object to the question upon the ground that it is assuming something that is not in evidence, and furthermore, that this witness has not heretofore testified that the cross-marks signify anything.

The COURT.—Do you know what they signify? [187]

The WITNESS.—(Continuing.) I know the items, but I don't know exactly what the payments represent. I know what go to make up the figures that are opposite these three cross-marks. The items I can pick out here. They are items marked here "Kissane" and "Police" items. I think I did have instructions from Mr. Birdsall with reference to making up that particular item. The instructions were to make them up in one total, as I have shown them here. Those items marked "Police," "Kissane" and "Gift," or something of that character, were all together in that total. He didn't tell me to put down just simply crosses instead of what the items really were. I don't recall any specific instructions. He said just to show these items separately, but I don't now recall any instructions.

(The attention of the witness was then directed to United States Exhibit 3, page 87.)

The WITNESS.—(Continuing.) The summary on that page is in my own handwriting. The three

(Testimony of E. O. Vaughan.)

crosses with the figures $195 are in my handwriting. The same items in the month of June accounts went to make up the $195.

(The attention of the witness was then directed to page 94, United States Exhibit 3.)

The WITNESS.—(Continuing.) The summary for the month of July, 1924, on that page is in my handwriting, and the four cross-marks with $180 opposite, is made up of the same items, "Kissane," "police," "gifts."

(The attention of the witness was then directed to page 101 United States Exhibit 3.)

The WITNESS.—(Continuing.) The summary on that page for the month of August, 1924, is in my handwriting, and the three cross-marks with the $180 opposite that figure, are made up [188] from the items "Kissane," "Gifts," "Police," and on page 107, the summary is made up in my handwriting, and the five cross-marks, with the figures $170 opposite, for the month of September, 1924, is made up from the total of the three items, "Kissane," "Police," "Gifts," for the month of September. United States Exhibit 16 is a statement from the books for the month of September, the totals. It is intended for a profit and loss statement for the business that was carried on there, according to the book, for the month of September, 1924.

(The attention of the witness was then directed to pages 80 and 81, at the top of page 80, under date of May 19, 1924.)

(Testimony of E. O. Vaughan.)

The WITNESS.—(Continuing.) The item "Gov. fine $500," and on the opposite page, 81, "½ fine $250," is in my handwriting. That indicates one-half of the item shown over here, the $500, one-half of the item on page 80, it appears chargeable to some individual. It was chargeable to Birdsall. It says "Bird." I presume it was Birdsall.

The COURT.—What was that $500 for?

A. Well, it says there "Gov. fine."

The WITNESS.—(Continuing, to Mr. Gillis.) I usually went there to make up these books about the first of the month, or as soon after as I could. I think it was around the first. I usually saw Birdsall there. I don't know of any conversation we had after I once got started about making up the different items of the book. I usually just went ahead the same as the preceding month. I saw Mr. Eddie Marron there. I usually went into the front room of the flat to make up the summary. Occasionally Mr. Marron and Mr. Birdsall had been in the room when I was working on it; maybe not continually; probably there were times when they were not present. Occasionally one would [189] be present, and sometimes both of them. That went on up to the time that I made the last statement for the month of September. I don't know who gave me the book when I first went there. I presume Birdsall handed it to me when I first started in. He was the first man that I took it up with reference to keeping the books. I received instructions

(Testimony of E. O. Vaughan.)

from him at that time with regard to the salary I was to receive and what I was to do.

Q. Look at Government's Exhibit 16, which is the September profit and loss statement, Mr. Vaughan. I would like the jury to get a view of this at the same time. You have got an item there, "Slot machine, $254."

Mr. SMITH.—Just a second. We will object to that on the ground it is purely immaterial, irrelevant and incompetent. The defendants here are not charged, or any of them charged with maintaining slot machines, and I assume that the question is simply asked for the purpose of prejudicing the jury in the consideration of the evidence.

Mr. GILLIS.—I will say it is not, Mr. Smith.

Mr. SMITH.—We will object to it on the ground it is highly improper.

The COURT.—It shows the relations between these parties. I do not think the jury is going to convict these men of conspiracy because they had slot machines there, but the financial arrangements, division of the money, are all matters to be considered in connection with the charge that they conspired. I will overrule the objection.

Mr. SMITH.—Note an exception.

Mr. GILLIS.—Q. Where did you get the items to make up the figure $254, Mr. Vaughan?

A. Isn't it in the book, there?

Q. Glance back and see. A. There it is. [190]

Q. You received that from page 106, which would be the summary for September?

(Testimony of E. O. Vaughan.)

A. Yes, September.

Q. Now, I call your attention to an item of "salaries $840." Do those salaries appear in that book, or were you given that amount?

A. I will look in the book, I can't recall all the details. Here is part of it. As I recall it, $20 a day was charged for Birdsall.

Mr. SMITH.—I will ask that that go out as being immaterial, irrelevant and incompetent, and not responsive to the question. He was asked about a particular item. Will you read the question, Mr. Reporter?

The COURT.—I remember the question. He was asked what went to make up the item of salaries, and the answer was $20 a day was paid to Mr. Birdsall. The motion is denied.

Mr. SMITH.—Exception.

A. (Continuing.) And this item marked "Charles, $240," makes $840.

Mr. GILLIS.—Q. Who was Charles?

Mr. O'CONNOR.—If he knows.

Mr. GILLIS.—Q. If you know.

A. There was a fellow there by the name of Charles, and I presume it was paid to him.

Mr. O'CONNOR.—I ask that this presumption go out.

Mr. GILLIS.—Q. Did you know any other employee there on the premises, Mr. Vaughan?

A. Did I know any?

Q. Yes. A. This fellow Charles.

Q. Did you know him?

(Testimony of E. O. Vaughan.)

A. Well, I met him there.

Q. Did you know his last name? A. Yes.

Q. What was his last name? A. Mahoney.

Q. Does the word "Charles" refer to that individual, if you know?

Mr. O'CONNOR.—That has been asked and answered. [191]

A. As I said before, I presume so, but I did not see the money paid, or anything like that.

The WITNESS.—(Continuing.) I don't know of anybody else who were employees there except Mr. Mahoney. The two letters here "E. M.," with the figures "600" opposite them, refer to E. Marron, and the $600 was his payment there for September, the amount he received in September. Further, below, "E. M. proportion $293.55, G. B. proportion $293.55," the latter "E. M." refers to E. Marron, and "G. B." refers to G. Birdsall. The items referred to show the balance there of $587.10, after charging off the $600, taking that away from it, and then that was divided up equally. I received instructions from Mr. Birdsall with reference to the manner in which these figures should be set down and deducted. He said after the expenses had been deducted from the receipts, then that amount should be deducted, and the balance equally divided between them.

Q. Do I understand that from the net proceeds the defendant Marron was to receive $600 and after that $600 had been deducted that the balance was

(Testimony of E. O. Vaughan.)

to be divided equally between Eddie Marron and George Birdsall—

Mr. SMITH.—Just a second.

Mr. GILLIS.—Q. (Continuing.) Is that correct?

Mr. SMITH.—Have you finished?

Mr. GILLIS.—Yes.

Mr. SMITH.—We will object to that on the ground that it is leading and suggestive.

The COURT.—Overruled.

Mr. SMITH.—I submit, may it please the Court, that Mr. Gillis says he understands. Let us have what the witness understands.

The COURT.—The objection overruled.

Mr. SMITH.—Note an exception.

A. That was my understanding. That is the reason I did it in that manner. [192]

The COURT.—Mr. Smith, have you examined that Sayers Case?

Mr. SMITH.—Yes, your Honor.

The COURT.—It is as squarely in point as anything could be.

Mr. SMITH.—I do not know how it could be, your Honor. I have gone over the whole thing. As I understand the situation, the opinion was written by Judge Bourquin, sitting as a Circuit Judge temporarily. After the decision came down I went into the chambers of Judge Rudkin and discussed the matter with him, and he said that these matters were purely incidental and were not considered by the Court. But, after reading the decision, I have

come to this conclusion, that possibly they attempt to distinguish between the Gouled case and that case in that the records in that particular case were public records, or the records only of others than the persons on trial. For instance, in that case there was a bank book, and that evidence was easily accessible and obtainable.

The COURT.—Not at all. The distinction was clear as between the case of Adams and the case of Gouled; I have not any doubt about that at all. In the Gouled case the papers were taken surreptitiously, and the gist of the Gouled Case was that the seizure of papers by stealth and trick was as much a violation of the constitutional rights as a seizure by force. Even the Gouled case, itself, points out, as Judge Bourquin says in the Sayers Case, that there is nothing particularly sacred about papers. And, as Judge Bourquin points out in the Sayres Case, it is distinctly held in the Adams Case, or, rather, in the Boyd Case, that where entry is made on a valid search-warrant while a crime is actually being committed, that any evidence of that crime that happens to be found there can be seized and used. That is the clear language of the Sayers Case. Of course, I am bound by the decision, and not by any conversation with any judge about it. [193]

Mr. SMITH.—I appreciate that, your Honor, but the Court seems to be overlooking entirely one of the six points made by the appellant in the Gouled Case, and that is the point that appertains

entirely to the Fifth Amendment to the Constitution of the United States, the matter of self-incrimination; the point was considered separately and entirely distinct from the question of unlawful seizure. The matter there discussed was one compelling a defendant, one on trial, to take the witness stand against himself.

The COURT.—I know the Gouled Case very well. That was one of the questions certified up, and, of course, the Supreme Court held, and properly held, that the secret and furtive seizing of a man's papers is compelling him, indirectly, to be a witness against himself. I have no doubt about that. But that is a very different thing from the taking of evidence, where a man is arrested in the act of the commission of a crime, as is pointed out in the Boyd Case, and Judge Bourquin refers to it, that if a man's property was searched on a search-warrant for stolen goods, it would be absurd to say that tools of his burglary would not be equally seizable. I am clear on this, Mr. Smith.

Mr. SMITH.—We are in perfect accord with reference to the matter of seizure, but we are not in accord as to the matter decided by the Supreme Court on one of the questions certified, and that is the question of the relevancy and competency.

The COURT.—You will note also that the Court of Appeals, in the Sayers Case, considered the Gouled Case, and in the opinion of the Court of Appeals the Gouled Case is direct authority for the decision of the Sayers Case.

(Testimony of E. O. Vaughan.)

Mr. SMITH.—They just took up a portion of the Gouled Case.

The COURT.—It is unfortunate that the Gouled Case is referred to as the Gould Case, but that is evidently merely a typographical error. [194]

Mr. SMITH.—Yes. The Sayers Case simply took up a portion and referred to that portion of the Gouled Case, and said there was no special sanctity in papers, but it did not discuss or did not involve the question of using writings of a person on trial. They were purely writings of other persons.

The COURT.—If you have anything to offer when the case is concluded, before the case goes to the jury, I will hear you on it, but I am quite clear as to what the Sayers case means at the present time. You may proceed, Mr. Gillis.

Mr. GILLIS.—Q. Mr. Vaughan, will you look at the bottom of page 69, an item there mentioned, "New Police $90"; that is in your handwriting, is it? A. Yes.

Mr. SMITH.—What is the item referred to?

Mr. GILLIS.—"New Police $90."

Mr. SMITH.—I cannot agree with you that that is what it says there. It looks to me like "New Policy."

Mr. GILLIS.—Q. Did someone give you instructions with reference to putting that in there, Mr. Vaughan?

A. They must have, otherwise I would not have

(Testimony of E. O. Vaughan.)

written it, not knowing anything about any payment of any kind.

Q. Do you know who gave you those instructions?

A. Well, I can say Mr. Birdsall, although I do not recall the incident just now.

Q. That is the best of your recollection?

A. Yes.

The COURT.—Is it "New Police," or "New Policy"? A. It looks like "Policy" here.

Q. Do you remember?

A. I do not recall the item, no.

Mr. GILLIS.—Q. Do you recall the incident at all?

A. No, nothing about it, nothing in my mind now on it, it is my writing, but I do not recall writing it there, that is, any special incident connected with it. [195]

Q. You have no recollection as to what that particular item is?

Mr. O'CONNOR.—Objected to on the ground it has been asked and answered.

The COURT.—I will let him answer again. You may answer.

Mr. O'CONNOR.—Exception.

A. No, I do not recall.

WITNESS.—(Continuing.) The only recollection I have of the first time I went into the place is from the books. I see my figures at the end of February.

Q. Before you took up the matter of keeping

(Testimony of E. O. Vaughan.)

the books with Mr. Birdsall, had you gone into that place?

Mr. SMITH.—That is objectionable on the ground it is immaterial, irrelevant and incompetent.

The COURT.—The objection is overruled.

Mr. SMITH.—Exception.

A. I do not recall now whether I had or not.

WITNESS.—(Continuing.) I had purchased drinks in that place. I don't know what I had purchased,—whiskey, I suppose. I don't remember whom I bought it from. I would not say who happened to be there. I suppose either Birdsall or Mahoney. I was there from March on of 1924. I suppose I had a drink in there every time I was in there. For this purpose I was there once a month. I may have dropped in other times off and on.

Cross-examination.

(By Mr. SMITH.)

I was never served any liquor in that place by Mr. Marron.

Cross-examination.

(By Mr. GREENE.)

I do not know the defendant Walter Brand. From an examination of the records of this establishment and conversation with the proprietor I do not know when the defendant Brand severed his [196] connection with the place. I don't know anything about it at all. I went there throughout the year 1924, from about March on,

(Testimony of E. O. Vaughan.)

for the purpose of examining the books, up to about the end of September, I think, to the best of my memory. I never saw the defendant Brand there; that is, I don't know the man.

Q. Who is the man sitting in the end seat there

A. I do not recall ever having seen him.

(R. Tr., pp. 111–126.)

TESTIMONY OF L. H. COLEMAN, FOR THE GOVERNMENT.

L. H. COLEMAN, a witness called for the United States, and sworn, testified as follows:

Direct Examination.

(To Mr. GILLIS.)

I am an adjuster for the Spring Valley Water Company. I have with me the records from our office as to the charges against 1249 Polk Street for the year 1924.

Mr. O'CONNOR.—Objected to on the ground it is immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. O'CONNOR.—Exception.

WITNESS.—(Continuing.) The instrument I hold in my hand is an official record of the Water Company.

Q. From that record, can you tell as to whom the water was charged for the year 1924?

Mr. SMITH.—That is objected to on the ground that the instrument will speak for itself.

(Testimony of L. H. Coleman.)

The COURT.—That is merely preliminary. I will overrule it.

Mr. SMITH.—Exception.

A. In the name of Eddie Marron. [197]

Mr. SMITH.—I will ask that it go out.

The COURT.—Yes, that is not responsive. You are simply asked if you can tell from that.

A. Yes.

Mr. GILLIS.—What does the record show with reference to that?

Mr. SMITH.—I will object to that question on the ground that the instrument speaks for itself.

The COURT.—Yes, that is true.

Mr. GILLIS.—I offer the record of the Water Company in evidence as the Government exhibit next in order.

Mr. SMITH.—We will object to its introduction on the ground that it is immaterial, irrelevant and incompetent.

The COURT.—The objection is overruled.

Mr. SMITH.—No foundation has been laid for it.

The COURT.—It is part of your regular records? A. Yes.

The COURT.—There is no need of keeping it here, is there

Mr. SMITH.—I have no desire to keep it.

The COURT.—Then read it into the record and let the witness take it back.

(The record referred to follows.) [198]

Mr. GILLIS.—Q. I show you Government's Ex-

(Testimony of L. H. Coleman.)

hibit 15 for Identification and ask you if you recognize that? A. Yes.

Q. What is that instrument?

Mr. SMITH.—I object to that on the ground that the instrument will speak for itself as to what it is.

The COURT.—That might be and it might not be. It is a question of identification.

Mr. GILLIS.—The objection yesterday was that it was not properly identified. Now I am attempting to properly identify it.

The COURT.—The objection is overruled.

Mr. SMITH.—Note an exception.

A. This is a receipt of the Water Company, stamped by perforated stamps, September 5, 1924; that is a receipt under the name of Eddie Marron taken from the Water Company.

Q. That is the regular Water Company bill?

A. The regular Water Company bill.

Mr. GILLIS.—I now ask that this be introduced in evidence, your Honor.

Mr. SMITH.—We will object to its introduction on the ground it is immaterial, irrelevant and incompetent, and no proper foundation has been laid for its introduction.

The COURT.—Overruled.

Mr. SMITH.—Exception.

(The document was here introduced in evidence and marked "U. S. Exhibit 15.")

Said exhibit was and is in the following words and figures:

(Here insert exhibit.) [199]

(Testimony of Charles J. Heggerty.)

Mr. GILLIS.—I wish to call the jury's attention to this exhibit for 1249 Polk Street, the two names at the bottom of the column, "*F*eorge Hawkins, 10/2/22, Close 1121 Bush Apartment No. 3," underneath that name, "Eddie Marron, Mail 11/21/23," giving the charges for water at that place in the years 1923 and 1924.

(R. Tr. pp. 126–128.)

TESTIMONY OF CHARLES J. HEGGERTY FOR THE GOVERNMENT.

CHARLES J. HEGGERTY, a witness called for the United States and sworn, testified as follows:

Mr. SMITH.—May it please the Court, before we start taking the testimony of Mr. Heggerty, may the record show that my objection offered yesterday to the introduction of these papers that were seized be incorporated, together with my objection of to-day

The COURT.—Yes.

Direct Examination.

(By Mr. GILLIS.)

I reside at 1518 14th Street, Sacramento, and my business is a statistician in the office of the Secretary of State.

Q. Have with you the affidavit of candidate of Eddie Marron? A. Yes.

Mr. SMITH.—We will object to that on the ground it is immaterial, irrelevant and incompetent.

(Testimony of Charles J. Heggerty.)

The COURT.—This is merely preliminary.

Mr. GILLIS.—Preliminary is all.

The COURT.—Overruled.

Mr. SMITH.—Exception.

WITNESS.—(Continuing.) I recognize that instrument. It is [200] one of the official records of the Secretary of State's office.

Mr. GILLIS.—I ask that this instrument be introduced in evidence.

Mr. SMITH.—To which we object on the ground it is immaterial, irrelevant and incompetent, and no foundation laid.

Mr. GILLIS.—I will state to the Court that the purpose of the introduction of this instrument is for the furnishing of an exemplar of the handwriting of Mr. Marron.

Mr. O'CONNOR.—Has Mr. Heggerty identified that handwriting?

Mr. GILLIS.—It is an official document filed with the Secretary of State.

Mr. O'CONNOR.—That certainly is not a proper way to prove the handwriting of a defendant, if your Honor please.

The COURT.—This is an official record of the State of California? A. Yes.

Q. The Secretary of State acts upon this in issuing his certificate, does he not, of the candidacy?

A. Yes. The Political Code provides no candidate shall appear on the ballot unless his affidavit is filed.

The COURT.—That is made in accordance with the provisions of the statute of the State of California requiring it to be filed and acted upon by the officials, and Section 1881 or 1880 of the Code of Civil Procedure of the State of California provides that a comparison may be made with writings which have been acted upon. The objection is overruled.

Mr. SMITH.—As I understand the law as to the proving of handwriting, there are only two ways that it may be proved: first, by one who has actually seen the writing made; and, secondly, by someone who is familiar with the handwriting of the person whose writing it purports to be. I submit that the document in question is incompetent. [201]

The COURT.—You have omitted the third.

Mr. SMITH.—What is the third?

The COURT.—That is by comparison of the disputed writing with a writing which is established to be the writing of the person who is alleged to have executed the disputed writing, or upon which he has acted.

Mr. SMITH.—That has not been established.

The COURT.—Oh, yes. The Political Code requires the filing of an affidavit by a person who is a candidate for a public office with the Secretary of State. That was done and was acted upon by the Secretary of State, the witness says, upon that writing.

Mr. SMITH.—Yes, but may it please the Court, the defendant Marron here had not been identified

as the individual who filed this paper, or has not been identified as the individual whose writing it is. There is no showing here, or no foundation laid for the introduction of that paper. That might be some other Edward Marron, for all we know.

The COURT.—But there is another maxim of jurisprudence, and that is the identity of persons and the identity of names, and if he is not the person named there of course it may be shown. I will overrule the objection.

Mr. SMITH.—Note an exception.

Mr. GILLIS.—Now, may it please the Court, may a photostat copy of this original be introduced?

Mr. SMITH.—We will stipulate that the original may be withdrawn and the photostat copy put in its place, but we do not want that stipulation to at any time establish as a fact that we have consented to the introduction of the document, itself.

The COURT.—Not at all. [202]

(The document was here introduced in evidence as "U. S. Exhibit 18.")

Said exhibit was and is in the following words and figures:

(Here insert exhibit.)

(R. Tr. pp. 129–131.)

TESTIMONY OF EDWARD T. O'DONNELL, FOR THE GOVERNMENT.

EDWARD T. O'DONNELL, a witness called for the United States and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am employed by the Pacific Telephone & Telegraph Company as a supervisor. I have not the records showing the total charges against 1249 Polk Street for the year 1924. I have not the bills against that particular place outside of the final statement. I have the final statement. It is an official record of the company, a part of the regular records of the company and pertains to 1249 Polk Street.

Mr. GILLIS.—I ask that this be introduced in evidence and marked Government's exhibit next in order.

Mr. SMITH.—I will object to it on the ground it is immaterial, irrelevant and incompetent, and has no bearing on the issues in this case, and no proper foundation has been laid for its introduction. [203]

The COURT.—I do not think the note at the bottom is admissible, Mr. Gillis.

Mr. GILLIS.—I did not notice that, your Honor.

The COURT.—That is some remark made by somebody connected with the company.

(Testimony of Edward T. O'Donnell.)

Mr. GILLIS.—I am perfectly willing that that be excluded.

The COURT.—The rest of the document will be admitted.

Mr. SMITH.—We note an exception.

(Thereupon the document was introduced in evidence and marked "U. S. Exhibit 19.")

Said exhibit was and is in the following words and figures:

(Here insert exhibit.)

(The attention of the witness was directed to a document marked "11/5/26.")

This is an official record of our company. It is a duplicate of the other one, a subscriber's copy, and the other is an office copy. It is our office stub. I have papers showing against whom charges were made for the telephone at that place effective March 21, 1923, to the period of October 20, 1924. The card on the top is a part of the same instrument. It is a confirmation.

Mr. GILLIS.—I now offer these instruments, which are four sheets and a postal card, and ask that they be marked Government's exhibit next in order.

Mr. O'CONNOR.—As far as the defendant Mahoney is concerned, I object on the ground it is immaterial, irrelevant and incompetent [204] and no foundation laid for the introduction of it in evidence.

Mr. SMITH.—The same objection as to the defendants Birdsall and Marron.

(Testimony of Edward T. O'Donnell.)

Mr. O'CONNOR.—I further object as to the defendant Mahoney on the ground that it is hearsay and not binding on him.

Mr. SMITH.—The same objection as to the defendants Birdsall and Marron.

The COURT.—The objection is overruled.

Mr. O'CONNOR.—Exception.

Mr. SMITH.—Exception.

(Thereupon the document was here introduced in evidence and marked "U. S. Exhibit 20.")

Said exhibit was and is in the following words and figures:

(Here insert exhibit.)

(The attention of the witness was here directed to U. S. Exhibit 14 for Identification.)

Q. I now show you Government's Exhibit 14 for for identification, and ask you if you recognize that, Mr. O'Donnell?

A. Yes, that is the payment of a bill.

Mr. SMITH.—I will ask that that go out, that it is payment of a bill, that it is not responsive. The question was, do you recognize it?

The COURT.—Well, let it go out. You can answer that "Yes" or "No."

A. Yes.

Mr. GILLIS.—What is it?

A. A payment of the telephone bill. [205]

Mr. SMITH.—That is objected to on the ground that the instrument will speak for itself.

The COURT.—Overruled.

Mr. SMITH.—Note an exception.

(Testimony of Edward T. O'Donnell.)

WITNESS.—(Continuing.) It is a telephone bill payment. Not exactly one of the regular telephone company bills. It is a duplicate issued in case the original was lost. It is a bill from the telephone company. It is one of the telephone company's regular instruments that they send out.

Mr. GILLIS.—I would ask that it be introduced in evidence and marked "Government's Exhibit 14."

Mr. SMITH.—Objected to on the ground it is immaterial, irrelevant and incompetent, hearsay, no proper foundation has been laid.

The COURT.—Overruled.

Mr. SMITH.—Exception.

(The document was thereupon introduced in evidence and marked "U. S. Exhibit 14.")

Said exhibit was and is in the following words and figures:

(Here insert exhibit.)

(R. Tr., pp. 131–135.) [206]

TESTIMONY OF C. W. BELL, FOR THE GOVERNMENT.

C. W. BELL, a witness called for the United States and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am assistant vice-president of the Bank of Italy and was in charge of the Polk and Van Ness branch

(Testimony of C. W. Bell.)

up to December 10th of 1924. I was in charge there from about April 23d to December, 1924.

(The attention of the witness was then directed to a sheet of paper.)

Q. I show you a sheet of paper and ask you to look at it, without comment first. I ask you if that is an official record of the Bank of Italy.

A. Yes, it is the ledger sheet of the account of Brand & Marron.

Q. Just answer the question, is it an official record of the Bank of Italy? A. Yes.

Mr. SMITH.—I ask that the other answer go out.

The COURT.—Let it remain in.

Mr. SMITH.—Note an exception.

Mr. GILLIS.—I ask that this be introduced in evidence and marked Government's exhibit next in order.

Mr. SMITH.—To which we object on the ground it is immaterial, irrelevant and incompetent, no foundation has been laid for its introduction; furthermore, that the introduction of that instrument violates the Constitutional guarantee of the defendant Marron.

The COURT.—In what respect?

Mr. SMITH.—It is compelling him to be the unwilling source of information against himself. [207]

The COURT.—That is a new one. Overruled.

Mr. SMITH.—Note an exception.

(The document was here introduced in evidence and marked "U. S. Exhibit 21.")

(Testimony of C. W. Bell.)

Said exhibit was and is in the following words and figures:

(Here insert exhibit.)

WITNESS.—(Continuing.) I can tell from the record the length of time that the joint account was kept at the bank. The account was opened on September 4, 1923, and was closed on November 14th of the same year.

Mr. GILLIS.—Q. Calling your attention, Mr. Bell, to the heavy typing at the top of the page, "Two signatures required," what does that signify?

Mr. SMITH.—To which we will object on the ground that it is immaterial, irrelevant and incompetent, and no bearing upon the issues in this case.

The COURT.—Overruled.

Mr. SMITH.—Exception.

WITNESS.—(Continuing.) Those are the instructions to the bookkeeper that both signatures are required to draw against the account. The signature of Marron and Brand.

Mr. SMITH.—I will ask that the entire testimony be stricken from the record on the ground that it is immaterial, irrelevant and incompetent.

The COURT.—Motion denied. [208]

Mr. SMITH.—That the testimony does not show that the defendants, or any of the defendants in this action, are in any way connected with this account.

The COURT.—Motion denied.

Mr. SMITH.—Note an exception.

(R. Tr. pp. 135–137.)

TESTIMONY OF A. A. HICKS, FOR THE GOVERNMENT.

A. A. HICKS, a witness called for the United States and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am a police officer of the City and County of San Francisco and was such in August, 1924. I was present at 3047 California Street in this city on that date.

Q. Will you just state what you did when you went there?

Mr. SMITH.—We will object to that on the ground it is immaterial, irrelevant and incompetent, no proper foundation has been laid.

The COURT.—Overruled.

Mr. SMITH.—Note an exception.

The COURT.—You may answer.

WITNESS.—(Continuing.) I visited 3047 California Street on the morning of the seizure about nine o'clock. I saw an automobile standing across the street from 3047 California Street and after I had passed that block that machine drew into a garage and I walked back again and shortly after that machine came out of the garage and proceeded east on California Street, and in the [209] machine there was a man driving in company with Marron. I went back to where the automobile came from. The appearance of the automobile to me

(Testimony of A. A. Hicks.)

looked as though it had liquor in it. There were cases piled up in it.

Mr. SMITH.—We will ask that that go out as purely an opinion.

The COURT.—The motion is denied.

Q. What kind of cases were piled up in it?

A. My judgment was that it was liquor.

Mr. SMITH.—We will ask that that go out, "my judgment was."

The COURT.—Motion denied.

Mr. SMITH.—Note an exception to both rulings.

WITNESS.—(Continuing.) I went back to 3047 California Street. The basement was locked, the garage door, and I could smell liquor coming from the garage. I immediately went to the Western Addition Police Station and notified my captain, Captain Coulter, of what I had found. He detailed Officer Olivera with me to go up there and make a sanitary inspection and report back to him our findings. We proceeded back to 3047 California Street, rang the doorbell, and the owner, Captain Curran, admitted us, that is, his wife did, and we met him in the house, and we told him what we were there for; we made a sanitary inspection of the premises, and proceeded downstairs to the garage; he said he did not have a key to the garage, the garage was locked, and I asked him who had the garage, and he said Eddie Marron. And I said, "Where is he?" And he said, "I can get him." I said, "Have you got a key to the garage?" And he said, "No." I said, "How long

(Testimony of A. A. Hicks.)

have you had this garage?" And he said, "For several months." I said, "What is there in the garage?"

Mr. SMITH.—I ask that all this testimony with reference to who had the garage be stricken out on the ground it is hearsay [210] and not binding on the defendant Eddie Marron, he not being present.

Mr. GILLIS.—The testimony has come in without objection.

The COURT.—I do not think that is a good answer, Mr. Gillis, because the witness was making a long and detailed answer to a rather general question.

Mr. SMITH.—In order to make an objection to that question I would have to be a mind reader.

Mr. GILLIS.—I further make the suggestion, it is similar to the situation yesterday.

The COURT.—Yes, the evidence is clearly admissible, because it is some evidence from which the jury may conclude that this man was a co-conspirator with Mr. Marron; the motion is denied. You may go ahead.

Mr. SMITH.—We will note an exception, and object further on the ground the proper foundation has not been laid. There is no evidence here that Captain Curran was a co-conspirator.

The COURT.—There was some evidence. He testified that he rented this place to Mr. Marron, and that he had reason to believe that it was being

(Testimony of A. A. Hicks.)

used for the storage of liquor, and, of course, if that was so he would be a co-conspirator.

Mr. SMITH.—As I recall the testimony, may it please the Court, not that I want to prolong the argument, but as I recall the testimony, when he was asked if he knew what was in there he said no.

The COURT.—He said he suspected there was liquor there.

Mr. SMITH.—My recollection is different from that of the Court. I urge my objection on the grounds already given.

The COURT.—Motion denied.

Mr. SMITH.—Exception. [211]

A. I asked him what was in the garage, and he said, "You know what is in there?" and I said, "No, I don't know what is in there." "Well," he said, "it is stored with liquor." I said, "Who owns the liquor?" And he said, "Marron." I said, "I will see about that later." So I said, "There is no way of getting in, and you have no way of getting in?" And he said, "No; there is only the one door, and that is locked, and I have not the key." So I then asked my partner, Mr. Olivera, to proceed to the station and report back what we had found to Captain Coulter, which he did.

A. Officer Olivera returned and said that he had.

Mr. SMITH.—I ask that that all go out, whatever he said.

The COURT.—It is pretty difficult for a man to tell just exactly what happened without stating what was said. I presume that is not evidence.

(Testimony of A. A. Hicks.)

It may go out. Just tell us what you and Mr. Olivera did, and what other people did there, without reference to what was said, other than what was said by this Captain Curran.

A. Your Honor, I am trying to tell you and the gentlemen of the jury what my actions were in the case; I have not any object in saying anything that is not exactly proper.

Q. Try and do that without giving anything that was said, if you can.

A. Well, in due time the officers from the Prohibition Department arrived on the scene. About that time Captain Coulter arrived, and I then told him what had occurred, what I had found, what I suspected, and he asked if the owner of the premises was there, and I said, "Yes," so Captain Coulter in company with me and Officer Olivera proceeded to the house, rang the bell, which was opened by Captain Curran, and the captain said he wished personally to make a sanitary inspection, and we went through the premises, and then downstairs and into the alleyway. In the meantime Marron had arrived on the scene, and went into the house, and there is an alleyway alongside of the house, which was locked, [212] and there is a grating or lattice work on that door that gives you a view down the alleyway, and we saw them take a hammer and tools of some kind and tore out the side of the garage, Marron and Captain Curran, and I saw them carrying packages out of the garage and down into the rear of the yard, Marron and

(Testimony of A. A. Hicks.)

Captain Curran; and shortly after that the prohibition agents arrived—Captain Coulter and they both arrived about the same time. Then we proceeded into the house and down the alleyway to where this entrance had been made into the garage, and there we saw the liquor that was later seized, and we asked Captain Curran to unlock the door; there was a lock on the side of the door, and he got the key and unlocked the door, and we went out on the sidewalk and told the prohibition officers that the basement was full of liquor; Mr. Shurtleff and several other prohibition officers then came in and took charge. Mr. Shurtleff and one of the drivers of the machine took Captain Curran away, presumably to his office, and Officer Olivera and I were left in charge until the trucks arrived and carried the liquor away.

The COURT.—What became of Mr. Marron?

A. He disappeared. I don't know what became of him; he did not go out the front way; I guess he went out the back way. There were gunny-sacks, and later on we found those gunny-sacks full of Scotch whiskey in a drygoods box in the chicken-yard in the rear of the house; I think the box was nearly full; I think there was a dozen or fifteen sacks. The last I saw of defendant Marron was just prior to the arrival of the officers. That was in the alleyway behind this locked gate. He was carrying sacks of liquor to the rear of the house. I was present at 2922 Sacramento Street on September 3d.

(Testimony of A. A. Hicks.)

Q. What did you see there, Officer, without giving any conversation with any individuals at that place? What time did you get there? [213]

Mr. SMITH.—Before the witness answers that question, may it please the Court, I am going to ask that all of the testimony theretofore given with reference to what transpired at 3047 California Street be stricken from the record, and the jury instructed to disregard it, upon the ground that the entry, as made, manifestly was unlawful, that the officers did not enter, that is, the police officers did not make the seizure—the entry was made by the Federal Prohibition Department, and that their entry was unlawful in that they had no warrant; that there has been no foundation laid for the introduction of this testimony as against anyone in this conspiracy.

The COURT.—The motion is denied.

Mr. SMITH.—Note an exception.

WITNESS.—(Continuing.) I got there shortly after eight o'clock. I just have forgotten. I have the notation here of the date, approximately eight o'clock on September 3d. I had reported to Captain Coulter information given me the evening prior, and the following morning Captain Coulter said to me to proceed to this 2922 Sacramento Street.

Mr. SMITH.—We will ask that that all go out as hearsay and incompetent.

The COURT.—Denied.

Mr. SMITH.—Note an exception.

(Testimony of A. A. Hicks.)

WITNESS.—(Continuing.) And make a sanitary inspection and report to him our findings. I went to that address and after waiting a while I was admitted by Herman Baum, the man who lived there. He invited me to come in with Corporal Clark. We made a sanitary inspection of the building, the yard, and then we proceeded to the basement. As soon as we got into the basement I asked him whose liquor this was. I said, "What is this here?" He said, "Liquor." I said, "Who does it belong to?" He said, "It does not belong to me, it belongs to Eddie Marron." I said, [214] "How long has it been here?" He said, "I don't know, I have just rented the basement to him." I then notified Captain Coulter of my findings, and he in turn notified the prohibition officers, and in due time they arrived.

Mr. SMITH.—May it please the Court, at this time I am going to move that the entire testimony with reference to what was said by Mr. Baum be stricken out as pure hearsay, and the jury be instructed to disregard it, and I ask that the witness refrain from giving any hearsay testimony at all.

The COURT.—I do not think that is hearsay testimony at all. If a man rents his place for the storage of liquor, he is a co-conspirator with the one who stores it there, clearly, and his statements during the progress of the conspiracy of the storing of the liquor are admissible. The motion is denied.

(Testimony of A. A. Hicks.)

Mr. SMITH.—Has there been any testimony here that Baum rented this place to anyone?

The COURT.—That is what he testified to now. I am clear on it. The motion is denied.

Mr. SMITH.—Exception.

Mr. O'CONNOR.—Exception as to the defendant Mahoney, too.

The COURT.—Yes.

Mr. SMITH.—Baum is not charged here as a defendant, no testimony could be received as against Baum in this proceeding.

The COURT.—The motion is denied. Go ahead.

Mr. GILLIS.—Q. The liquor was then taken by the prohibition agents? A. Yes.

Q. At that place? A. At that address.

Cross-examination.

(By Mr. SMITH.)

I had no reason to believe, whatsoever, that a sanitary [215] inspection was necessary or that any one of the health ordinances was being violated at either one of these addresses. I was acting under orders of my superior. It was simply a subterfuge to gain entrance to the premises, if you wish to call it that. I did not have a search-warrant. I did not seize liquor. Whatever was done there with respect to the seizure of the liquor was done by the prohibition officers. I never took any of the liquor into my own custody. The prohibition officers, to my knowledge, did not have a search-warrant.

(R. Tr. pp. 137–146.)

TESTIMONY OF HERMAN BAUM, FOR THE GOVERNMENT.

HERMAN BAUM, a witness called for the United States and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I reside at 2922 Sacramento Street. I have lived there for about thirty years. About July, 1924, I rented a portion of my basement. I do not know exactly the date—about July, 1924. I rented it to Mr. Marron, Eddie Marron, one of the defendants in this case. He paid me $50 a month rent for it. That for just a portion of it. I did not know at the time what he used it for when he rented it. He kept it about four months, four and a half months, three and a half months—something like that.

Q. Did he ever give you any boxes to burn for kindling or for fire?

Mr. SMITH.—We will object to that on the ground it is immaterial, irrelevant and incompetent, leading and suggestive.

The COURT.—Overruled. [216]

Mr. SMITH.—Exception.

WITNESS.—(Continuing.) There were boxes left behind sometimes, yes, just ordinary boxes.

Q. Did they have any printing on them?

A. I do not remember.

Mr. SMITH.—We object to the entire line of

(Testimony of Herman Baum.)

examination on the ground it is leading and suggestive, immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. SMITH.—Exception.

A. I don't remember.

WITNESS.—(Continuing.) I could not tell you whether I saw any printing on any of these boxes. I have known Mr. Marron for about twenty-five years. During that time he was there I saw him about once or twice, and I thought perhaps there might be something like liquor in there. What the nature of it was I could not tell you. I never tasted any of it.

Cross-examination.

(By Mr. SMITH.)

I was a witness before the Federal Grand Jury at the time this matter was presented. I signed a piece of paper there, simply a statement that I rented it to Mr. Marron and received $50 a month for it. As far as I can remember the exact wording, I could not tell you. I did not sign any waiver of immunity. I did not rent the basement to Mr. Marron for the purpose of storing liquor there. He just asked me if he could rent it. There was a bed in that room.

Mr. SMITH.—Now, may it please the Court, I will ask that all of the testimony given by this witness be stricken from the record on the ground it is immaterial, irrelevant and incompetent, and there has been no testimony adduced here to show

(Testimony of William Glynn.)

that the defendant knew anything about what was going on there. [217]

The COURT.—Motion denied.

Mr. SMITH.—Note an exception.

Mr. O'CONNOR.—The same exception as to the defendant Mahoney, if your Honor please.

The COURT.—Yes.

Mr. GILLIS.—Q. Mr. Baum, did anybody promise you any immunity? A. No.

Mr. GILLIS.—That is all.

Mr. SMITH.—I would like to renew the motion heretofore made with reference to the testimony of Officer Hicks with reference to 2922 Sacramento Street, on the grounds heretofore urged, that it is not shown that Baum was a co-conspirator, or knew what was going on at that place, and on the ground it is all hearsay.

The COURT.—Motion denied.

Mr. SMITH.—Note an exception.

(R. Tr. pp. 146–148.)

TESTIMONY OF WILLIAM GLYNN, FOR THE GOVERNMENT.

WILLIAM GLYNN, a witness called for the United States and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am a Federal Prohibition Agent with the Government and I have been such for the past seventeen months. I was present at 3047 Cali-

(Testimony of William Glynn.)

fornia Street on August 26, 1924. When I arrived there I saw Police Officers Olivera, Hicks and Captain Coulter. We went there in response to a telephone to seize some liquor that they found there on a sanitary inspection, they told us. We seized some at that time. I have a list of that which we seized at that time. [218]

Mr. SMITH.—May it please the Court, I wish to urge the same objection to all of this testimony that I have heretofore urged respecting the seizure at 3047 California Street.

The COURT.—Overruled.

Mr. SMITH.—Note an exception.

WITNESS.—(Continuing.) The liquor that we seized was in the basement or garage, as you call it, under the house at 3047 California Street. It was pointed out to me by Officer Hicks. At that time the door was closed. We could see it through the crack. A person upstairs by the name of Curran opened the door. Then we took possession of the liquor and removed it to the Subtreasury Warehouse.

(The attention of the witness was here directed to bottle No. 27569.)

WITNESS.—(Continuing.) I remember that bottle. It was one seized at that time and at that place. We seized 398 sacks of Cascade beer, 7 sacks, part full, of whiskey, 3 cases of champagne, 2 barrels of wine, 2 barrels of brandy, part full, 1 barrel wine, part full, one 50-gallon tank part full of alcohol, 11 cases whiskey, 3 cases of cham-

(Testimony of William Glynn.)

pagne, 21 sacks whiskey, one 5-gallon jug part full of wine, two 20-gallon copper stills. The bottle No. 27569 was seized at that time and at that place and was delivered to the chemist.

(The bottle was here marked "U. S. Exhibit 22 for Identification.")

(The attention of the witness was here called to bottle No. 26733A, which was marked "U. S. Exhibit 23 for Identification.")

WITNESS.—(Continuing.) This bottle was seized by me at the time and was delivered to the chemist. [219]

(The attention of the witness was here called to bottle No. 26733, which bottle was marked "U. S. Exhibit 24 for Identification.")

WITNESS.—(Continuing.) That bottle was seized at the same time and place and was delivered to the chemist. I was present at 2922 Sacramento Street on September 23, 1924. At that place I saw Police Officers Hicks and Olivera and Corporal Brown—I think his name is Corporal Brown. I seized liquor at that time in the basement under the house at 2922 Sacramento Street.

Mr. SMITH.—May it please the Court, at this time I would like to urge that all the testimony with reference to what occurred at 2922 Sacramento Street be excluded for the reasons I have urged before with respect to the seizure at that address.

The COURT.—Motion denied.

Mr. SMITH.—Exception.

(Testimony of William Glynn.)

Mr. O'CONNOR.—The same objection on behalf of the defendant Mahoney.

The COURT.—The same ruling.

Mr. O'CONNOR.—Exception.

WITNESS.—(Continuing.) The door was open when we got there, in the rear, and that is how we gained access to the garage. We went in the rear or side door. At that time Mr. Baum was in there and a corporal of the police. We went there on a telephone from the Police Department. We seized 10½ cases of whiskey, or 128 bottles, 2 cases of champagne, 10 sacks of gin, 12 bottles each, 1 case of gin, 12 bottles, 1 case of Scotch whiskey, 12 bottles each, 1 one-fifth gallon bottle of jackass whiskey, 8 one-fifth gallon bottles of rum, 3 bottles of cognac. We took that to the Government warehouse.

(The attention of the witness was then called to bottle No. 26789.) [220]

WITNESS.—(Continuing.) I remember that bottle. That was seized at that time and place and was later delivered to the U. S. chemist.

(Thereupon bottle No. 26789 was introduced in evidence for Identification as "U. S. Exhibit 25.")

(The attention of the witness was then directed to bottle No. 26790.)

WITNESS.—(Continuing.) I recognize that. I seen the labels written at that time. It was seized at that time and place and later delivered to the United States customs.

(Testimony of William Glynn.)

(Thereupon bottle No. 26790 was introduced in evidence as "U. S. Exhibit 26 for Identification.")

(The attention of the witness was then directed to bottle No. 26791.)

WITNESS.—I recognize that bottle. It was seized at that time and place and later delivered to the United States chemist.

(Thereupon bottle No. 26791 was introduced in evidence as "U. S. Exhibit 27 for Identification.")

(The attention of the witness was then directed to bottle No. 26792.)

WITNESS.—I recognize that bottle. It was seized at the same time and place and later delivered to the United States chemist.

(Thereupon bottle No. 26792 was introduced in evidence as "U. S. Exhibit 28 for Identification.")

(The attention of the witness was then directed to bottle No. 26793.)

WITNESS.—I recognize that bottle. It was seized at the same time and place and delivered to the United States chemist.

(Thereupon bottle No. 26793 was introduced in evidence and marked "U. S. Exhibit 29 for Identification.")

(The attention of the witness was then directed to bottle [221] No. 26734.)

WITNESS.—I recognize that bottle. It was seized at the same time and place and delivered to the United States chemist.

(Thereupon bottle No. 26734 was introduced in evidence as "U. S. Exhibit 30 for Identification.")

(Testimony of William Glynn.)

Cross-examination.

(By Mr. SMITH.)

I did not personally deliver these bottles to the chemist. Their regular system is what I am going by. I have no independent knowledge.

Mr. SMITH.—I will ask that all of the testimony with respect to the delivery to the chemist be stricken from the record.

The COURT.—You know that these are the bottles that were seized at these two places?

A. Yes.

Q. They were marked there in your presence?

A. Yes, I seen them marked, the labels written.

The COURT.—I suppose you expect to produce the chemist, do you?

Mr. GILLIS.—I do, yes.

The COURT.—I think that may go out.

WITNESS.—(Continuing.) That is not my label at all on the bottle. It is the regular label of the Government, not the regular label of the chemist. The one that we carry with us all the time for evidence, stickers. I did not affix these labels to any of them. I have not seized a great many bottles at different places that resemble these during my seventeen months of service. I never seized any champagne at any place than these two places. I never seized any Pebbleford whiskey except at that place. *We* respect to the other bottles, there are a great many bottles that are similar to the others. I saw the bottles labeled and the [222] labels put on them by an agent. Agent Rinckel was

(Testimony of William Glynn.)

the agent who put the labels on them. He was there. Agent Shurtleff and myself were at Sacramento Street. All of these bottles were not taken from California Street. I have not my list of what was taken from California Street. I have not seized Pebbleford whiskey or champagne before in any raid that I have been on. I took the Pebbleford from both places of Marron, on Sacramento and California Streets, both. I could identify whether the bottle came from Sacramento Street or California Street if I saw the label. Agent Shurtleff and the police officers were with me on the California Street raid. On the Sacramento Street raid there was Rinckel, Whittier and Eldredge and the police officers. I did not deliver these to the chemist myself. I simply followed what was the usual course. I have not seen the chemist's label. I only know by our own label. I do not know what the chemist's label is. I do not know by looking at the label that that has been to the chemist. My answer would be the same with respect to each of these bottles. I do not know whether it has been submitted to the chemist or not. It has been submitted, but I do not know whether it ever got there or not. I do not know whether it got there or not and was analyzed. I could not testify to that. The chemist will have to do that. By submitted I mean our usual way is to take this evidence and label it with internal revenue labels, the agents' names, the date of the investigation, and submit it in the usual way; sometimes from

(Testimony of William Glynn.)

our own office other agents besides the ones that seize it take it over. I do not know what officers made the seizure on California Street. It was not one of the prohibition agents. It was one of the police officers. Hicks and Olivera were there together. If I was told that police officers testified that prohibition agents made the seizure, my testimony would not be any different. They had already seized it and turned it over to [223] us. The police officers seized the liquor and turned it over to us when we got there. They told us it was there and the basement full of it. I mean that they were there when I got there, and they told me it was there and I went in and took it out.

Redirect Examination.

(By Mr. GILLIS.)

All of the labels were made out and put on the bottles in my presence.

(R. Tr. pp. 148–157.)

TESTIMONY OF CHARLES D. O'CONNOR, FOR THE GOVERNMENT.

CHARLES D. O'CONNOR, a witness called for the United States and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am a notary public and have been such for pretty near 20 years in San Francisco.

(The attention of the witness was then directed to U. S. Exhibit 18.)

(Testimony of Charles D. O'Connor.)

WITNESS.—I recognize that instrument. That is my signature at the bottom as a notary public. I administered the oath to Mr. Marron. I know Mr. Marron. He is the defendant in this action.

(R. Tr. p. 157.)

TESTIMONY OF WALTER W. MENNE, FOR THE GOVERNMENT.

WALTER W. MENNE, a witness called for the United States and [224] sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I reside at 339 San Juan Avenue, San Francisco. On July 26, 1924, I occupied the position of deputy registrar of voters.

(The attention of the witness was then directed to a document.)

WITNESS.—(Continuing.) I recognize this as an affidavit. That is my signature at the bottom. I took the affidavit of registration.

Mr. GILLIS.—I now ask that that be admitted in evidence and marked as a Government exhibit.

The COURT.—That is only for the purpose of an exemplar of the handwriting?

Mr. GILLIS.—It is.

Mr. SMITH.—To which we will object on the ground it is immaterial, irrelevant and incompetent, no proper foundation has been laid, nothing to show that the handwriting there is in any way connected

(Testimony of Sidney Franklin.)

with the handwriting of any of the defendants, or that it purports to be the handwriting of them.

The COURT.—Who is it signed by?

Mr. GILLIS.—George L. Birdsall. I will ask a further question. Q. Is this an official record of the Registrar's office? A. Yes.

Mr. GILLIS.—I now renew the application to admit it in evidence.

The COURT.—Overruled.

Mr. SMITH.—I make the same objection and note an exception.

(Thereupon the document was introduced in evidence and marked "U. S. Exhibit 31.")

Said exhibit was and is in the following words and figures:

(Here insert exhibit.)

(R. Tr. pp. 157–158.) [225]

TESTIMONY OF SIDNEY FRANKLIN, FOR THE GOVERNMENT.

SIDNEY FRANKLIN, a witness called for the United States and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

On January 14, 1924, I was a deputy in the Registrar's office in the City and County of San Francisco.

(The attention of the witness was then directed to a document.)

(Testimony of Sidney Franklin.)

WITNESS.—(Continuing.) I recognize this instrument. That is my signature at the bottom. It is an affidavit of registration. I took the affidavit of Joseph E. Marron.

Mr. GILLIS.—I now ask that that be introduced in evidence and marked.

Mr. SMITH.—I make the same objection we made before.

The COURT.—Is Joseph E. Marron the same person as Eddie Marron?

Mr. GILLIS.—Yes.

Mr. SMITH.—There is no evidence of that.

The COURT.—I mean, is that his name?

Mr. GILLIS.—He is charged in the indictment as Joseph E. Marron, *alias* Eddie Marron.

The COURT.—What did he answer was his true name?

Mr. SMITH.—It appears in the indictment as Joseph E. Marron.

The CLERK.—J. E. Marron.

The COURT.—The objection is overruled.

Mr. SMITH.—Note an exception. [226]

(Thereupon the document was introduced in evidence and marked "U. S. Exhibit 32.")

Said exhibit was and is in the following words and figures:

(Here insert exhibit.)

(R. Tr. pp. 158–159.)

TESTIMONY OF ALF OFTEDAL, FOR THE GOVERNMENT.

ALF OFTEDAL, a witness called for the United States and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am a special agent for the Government, Bureau of Internal Revenue, United States Treasury Department, and have been such since September, 1921. I have been connected with the Government for the past twenty-one years. I saw the defendant Mahoney on October 11, 1924, in my office, 310 Grant Building. He was arrested on that day and was brought there by the deputy marshal. I had a conversation with him at that time, which conversation was taken down in writing. I have it with me.

Mr. SMITH.—We will object on behalf of the defendants Birdsall and Marron to the introduction of the testimony, upon the ground that it is not admissible against them, because this statement was made after the termination of the alleged conspiracy.

The COURT.—The objection of the defendant Mahoney will be overruled. The objection as to the defendants Marron and Birdsall [227] and Brand will be sustained. There is about to be read to you by Mr. Oftedal, the witness on the stand, gentlemen, a statement which Mr. Oftedal testifies was made by the defendant Mahoney. That state-

(Testimony of Alf Oftedal.)

ment having been made after the arrest of these men, and, therefore, after the termination of any conspiracy, if there was one, is admissible only as against Mahoney; therefore, this statement you are to consider only in connection with the defendant Mahoney, and are not to give it any weight whatsoever as to any of the other defendants. You may read it.

A. "Charles Mahoney, of San Francisco, California, makes answer to questions propounded to him by Alf Oftedal, Special Agent in Charge, Bureau of Internal Revenue, as follows:

"Q. The purpose of this interview, Mr. Mahoney, is to inquire as to your knowledge respecting certain violations of law committed at 1249 Polk Street in this city. You understand, do you not, that you are not being required to give any testimony regarding this matter, and that you may, at any time during this interview, decline to answer any question asked of you? Under these circumstances are you willing to proceed?

"A. Yes, sir.

"Q. Please relate the circumstances under which you first became associated with Eddie Marron at that place?

"A. Well, I was hired up there as bartender by George Birdsall. I could not state the date, I think in November or December, something like that, Birdsall was supposed to be running the place —Marron was selling out—that was my impression—I had heard them talking about selling out.

(Testimony of Alf Oftedal.)

"Q. Who, aside from Eddie Marron, Birdsall and yourself, operated that place up until the time of the raid of October 3d?

"A. I was off for a while in the month of February and they had another fellow there; I don't know what his name was, but I believe it was George Howard.

"Q. How long did you know George Birdsall prior to the time that [228] you accepted employment at that place?

"A. For a long while—years ago.

"Q. Was Birdsall the man who made you acquainted with Marron? A. Yes, sir.

"Q. During the time you were employed there serving drinks, were you paid by both Marron and Birdsall?

"A. Birdsall paid me every time. Sometimes I drew money on my salary.

"Q. About how frequently did Mr. Marron visit the place while you were there?

"A. Well, he was there quite often at first. He only just dropped in and went right out—never stayed around the place at all.

"Q. All three of you, at times, waited upon the customers at the place, did you not?

"A. I never saw C. M. Marron wait on anyone.

"Q. I now show you a note-book seized at 1249 Polk Street at the time of the raid October 3d. Will you just glance over this book and see if you don't recall having seen it at the place?

"A. No, I don't recall it. It must have been

(Testimony of Alf Oftedal.)

kept in the closet. I never paid any attention to their business at all. They told me they got that book out of the closet the day of the raid. I went up there and George said they took some books and stuff and when I said where were they, he said in the closet.

"Q. How frequently did you see Officer Kissane enter the building at 1249 Polk Street while you were employed there by Mr. Birdsall?

"A. I would not want to answer that question, because I don't know how many times. As near as I can recall it was twice. He may, of course, have been there at times when I was not there.

"Q. Will you give the approximate dates of those visits by Kissane?

"A. I could not say. I don't remember them.

"Q. There was a parlor up there, was there not, which contained a slot machine, together with other furniture? A. Yes, sir.

"Q. What kind of a slot machine was that?

"A. It was a four bit [229] machine. I am pretty sure it was a four bit machine.

"Q. Was it the practice whenever customers came to the place to show them to private rooms, or booths, so that these parties might have privacy?

"A. No, sir. They could go where they pleased. We had a regular flat but no privacy there at all —the place was wide open.

"Q. Who was employed there as janitor?

"A. I don't know his last name. Johnnie is all I know him as—an Italian fellow.

(Testimony of Alf Oftedal.)

"Q. Was he employed at the place during the entire time you were there?

"A. No, sir, I was doing general work for quite a while myself.

"Q. You knew about this trap-door, did you not, where this note-book we have referred to was concealed? A. Yes, sir.

"Q. Who had the combination or the key that allowed access to that door? A. Mr. Birdsall.

"Q. What was actually contained there?

"A. Champagne.

"Q. Anything besides champagne and this book?

"A. Well, I told you I never had the key to it, and if anyone wanted champagne I could not give it to them.

"Q. Where did you men obtain the lemons, seltzer water, ice and other articles of that nature that were purchased in connection with the business maintained at the place?

"A. The lemons we got downstairs in the fruit store; the seltzer from the San Francisco Seltzer Company, I think it is, and we got the ice from either the National or the Union—I think it was the National Ice Company.

"Q. This record and other evidence in hand shows that Colonel Bevins made frequent visits to the place and often became indebted on account of his purchases of liquor; that Marsh, Joseph Yager, Hutchison, Sullivan and Edwards also had transactions of that kind there. Do you remember those men?

(Testimony of Alf Oftedal.)

"A. I know two of them. That is, I know who they are—I don't know [230] the other names.

"Q. Who are the two you know?

"A. Marsh and Bevins. Bevins was there quite frequently. Marsh was not around lately.

"Q. Tell me how the deliveries of intoxicating liquors were made at that place?

"A. I guess they were mostly made at night. The stuff was always there for me in the morning.

"Q. What were your hours of duty?

"A. 9:00 o'clock until 4:00—something like that.

"Q. Did you see Walter Brand come to the place at times with liquors? A. No, I did not.

"Q. Had Walter Brand been there at any time to obtain liquors while you were there?

"A. He is not drinking. He came to the place very seldom—about twice within the last six or seven months. I know that he had the place before Marron took it over, sure.

"Q. What has been Chick Hawkins' connection with the place?

"A. I don't know Chick Hawkins. I heard that he had it before, I don't know that he had it.

"Q. Who brought whiskey to the place besides Vaughn? A. I don't know.

"Q. You knew that Vaughn was bringing it there from time to time?

"A. I could not say that I knew. I said it was brought in the night.

"Q. Are you sure now that you are talking frankly with us about this thing? A. Sure.

(Testimony of Alf Oftedal.)

"Q. What did you receive for your services there?

"A. Well, when I first started I think I received $35.00—I would not say positively. Then I think they gave me $50.00 and at last $60.00. I was drawing $60.00 a week at the time of the raid on October 3d.

"Q. It seems that the furnishings in that place were moved immediately following a raid on October 3d, and that Marron's truck removed the furniture. Were you there when this was done? [231]

"A. No, sir, I was not. I did not know it was gone. I have not been around there—I kept away from there.

"Q. Have you made any effort to communicate with any attorneys since you were placed under arrest?

"A. I spoke to the Marshal going over last night, and asked him if he would try to get in touch with my attorney?

"Q. And did you suggest who should be named as your attorney? A. Hughie Smith.

"Q. Did you ask the Marshal to see Hughie Smith?

"A. I asked him to try and get in touch with him; said to tell him I was in jail and I didn't want to stay in all night. I wanted to let my wife know where I was. The Marshal told me to-day he could not get in touch with him—I guess he was busy.

"I, Charles Mahoney, hereby certify that I have

(Testimony of Alf Oftedal.)

carefully examined this record of an interview in the office of the Intelligence Unit, Bureau of Internal Revenue, and further that my answers to the questions shown herein are, to the best of my knowledge and belief, the Truth and Nothing but the Truth, So Help Me God.

"CHAS. MAHONEY.

"Subscribed and sworn to before me this 11th day of October, 1924, at San Francisco, California.

"ALF OFTEDAL,

"Special Agent in Charge, Intelligence Unit."

WITNESS.—(Continuing.) This is the complete interview that I had with him at the time. Certain statements were made independent of the record, but this is in substance what he said while the stenographer was there. He told me independent of the record that police officers had come to the place from time to time, that Mr. Kissane and that a man named Birdsall, a brother to the defendant George Birdsall, who he said is a sergeant on the police force, also [232] came there, but when I questioned him with regard to that he said, "I don't want to say anything more; I want to stop now"; but he did not go into details as to what transpired when these different officers came there, and did not say that any police officers obtained any drinks there. He also mentioned Ward Marron, brother to—no, Sergeant O'Brien, related to Ward Marron, who had been there, but he did not say as to whether or not Sergeant O'Brien had received any liquor there.

(Testimony of Louis Olivier.)

(Thereupon there was read into the record on behalf of the Government, as part of the record in Record 15018, heretofore introduced in evidence, the following notation from the blotter of the Clerk's Office of the United States District Court, under date of May 23, 1924: "George Howard Fine, Case No. 15,018, Received cash $500.")

(R. Tr. pp. 159–178.)

TESTIMONY OF LOUIS OLIVIER, FOR THE GOVERNMENT.

LOUIS OLIVIER, a witness called for the United States and sworn, testified as follows:

Direct Examination.

(By Mr. GILLIS.)

I am a police officer of the City and County of San Francisco. I was present at 3047 California Street on August 26, 1924. At that time I saw the defendant Eddie Marron and had a conversation with him. Officer Hicks went to telephone and I was standing in front of the premises 3047 California Street. Marron drove up in an automobile and he said to me, "Why don't you arrest me?" I told him I could not, I was acting under orders from Officer Hicks. [233] "Well," he said, "if you will arrest me I will give you the $1,000." I said, "No." With that Marron drove away. Hicks then came and I told Hicks what Marron had said. That was the only conversation I had with him. About ten minutes later the Federal officials came.

(Testimony of Louis Olivier.)

Cross-examination.

(By Mr. SMITH.)

It is not a fact that Mr. Marron asked me for a search-warrant, and asked me if I had a search-warrant for the place. I am a cousin of Mr. Marron.

(R. Tr. pp. 178–180.)

TESTIMONY OF W. F. WHITTIER, FOR THE GOVERNMENT (RECALLED).

(By Mr. GILLIS.)

(The attention of the witness was here directed to some papers.)

WITNESS.—I recognize these papers. I got them in the serving-room, on the cash register, at 1249 Polk Street.

Mr. SMITH.—May it please the Court, I have so many times asked for the exclusion of all of this evidence that it is hardly necessary to repeat it, but so that the record may be clear, may the record show that we object to the introduction of all of this testimony and these records upon the grounds that I have heretofore urged with respect to the book and other papers seized as not having been described in the search-warrant?

The COURT.—The same ruling.

Mr. SMITH.—Note an exception.

To Mr. SMITH.—(Witness.) These papers were seized on October 2, 1924, all of these papers. We seized some on the 3d. I don't remember just what they were. They are attached here. [234]

(Testimony of John J. Casey.)

Mr. SMITH.—Are these papers that were seized on the 3d in evidence, Mr. Gillis?

Mr. GILLIS.—I don't know.

The COURT.—What difference would it make if they were seized on the 2d or 3d?

Mr. SMITH.—The 3d was the second raid.

Mr. GILLIS.—I ask that they be introduced in evidence as Government's Exhibit next in order.

Mr. SMITH.—To which we object.

The COURT.—Overruled.

Mr. SMITH.—Note an exception.

Mr. O'CONNER.—The same objection as to the defendant Mahoney.

The COURT.—Yes.

Mr. O'CONNOR.—Exception.

(Thereupon the document was introduced in evidence and marked U. S. Exhibit 33.)

Said document was and is in the following words and figures:

(Here insert document.)

(R. Tr., pp. 180, 181.) [235]

TESTIMONY OF JOHN J. CASEY, FOR THE GOVERNMENT.

JOHN J. CASEY, called on as a witness on behalf of the Government, being sworn testified as follows:

Direct Examination.

(By Mr. GILLIS.)

My name is John J. Casey; I am captain of police

(Testimony of John J. Casey.)

of the San Francisco police department; have been connected with the San Francisco police department for 20 years and 7 months. I know the defendant Gorham in this action and have known him for about 20 years. During the year 1924 he was assigned to the Bush Street District—that is the district over which I have charge—from about the 7th of March, 1924. The premises, 1249 Polk Street *Street* are in that district about half a block or about three-quarters of a block from the Bush Street station. I have known the defendant Kissane for about 20 years, during which time he has been a police officer. He was assigned to Polk and Larkin and Sutter to Broadway as a patrolman, and that assignment included 1249 Polk Street.

Mr. GILLIS.—I show you two sheets of paper and ask if you recognize them? A. Yes, sir.

Mr. GILLIS.—That is signed by Patrick Kissane, the defendant in this case, is it? A. Yes.

Mr. GILLIS.—And is what?

A. It is a miscellaneous report on an investigation on 1249 Polk Street.

Mr. GILLIS.—To whom?

A. It is addressed to me.

Mr. GILLIS.—From Captain Kissane?

A. From Officer Kissane.

Mr. GILLIS.—I mean from Officer Kissane.

A. Yes.

Mr. GILLIS.—You received that, did you?

A. No. That was received by Lieutenant Duffy, and, in turn, forwarded to me.

Mr. GILLIS.—I ask that that be introduced in evidence and marked Government's exhibit next in order. [236]

Mr. SMITH.—May I look at it first?

Mr. GILLIS.—Yes.

Mr. SMITH.—All right.

(The document was marked U. S. Exhibit 34.)

Mr. GILLIS.—I will read it to the jury:

"Police Department, City and County of San Francisco.

"Police District No. 5. Bush St. Station.

"San Francisco, Cal., Oct. 11th, 1924.

"Captain John J. Casey,

"Sir: I respectfully report the following:

"Subject: Report on 1249 Polk St.

"I have visited and officially inspected 1249 Polk St. about twice a week during the 8 to 4 watch for a year or more. I have never found any evidence of bootlegging being carried on there and saw no more than one or two persons in the place at any one time. I never saw any slot-machines there. I have made previous written reports stating that this place, 1249 Polk St. was suspected of bootlegging.

"PATRICK KISSANE,

"Police Officer, Star No. 80."

"Respectfully referred to the Chief of Police."

There is a notation at the bottom—will you read that for me, Captain?

A. "Rec'd by Duffy, Lieutenant, Star 607," it looks like.

(Testimony of John J. Casey.)

WITNESS.—(Continuing.) In October, if I remember correctly, around the first part of October, I spoke to Gorham about 1249 Polk Street and he told me that he had visited these premises sometime previously, and that he had been refused permission to search the place and that he had made an application for a search-warrant to Chief Bond and Warrant Clerk Golden, of the District Attorney's office, and Golden asked him if he had seen any violation of the law up there, any liquor sold, and Gorham told him that he had not, and I believe on [237] those grounds Golden refused to issue a search-warrant. Gorham said nothing about having gone to the premises with Kissane.

Q. I show you two sheets of paper and ask you if you recognize them? A. Yes.

Q. What is this that I hand you, Captain?

A. It is a miscellaneous report in reference to an investigation as to whether or not there were any slot machines ever observed in those premises.

Q. Made by whom? A. Sergeant Gorham.

Q. That is a defendant in this case? A. Yes.

Mr. GILLIS.—I ask that that be introduced in evidence and marked Government's exhibit next in order.

(The document was marked U. S. Exhibit 35.)

I will read it to the jury:

(Testimony of John J. Casey.)

"Police Department, City and County of San Francisco.

Police District No. 5. Bush St. Station.

San Francisco, Cal., Oct. 13, 1924.

Captain John J. Casey,

Sir: I respectfully report the following:

Subject: Conditions Observed at #1249 Polk St.

In compliance with your order of Oct. 12, 1924, relative to conditions observed by me and visits made to 1249 Polk St., I will state that about the latter part of March of this year, I visited this place to secure evidence of alleged bootlegging there and was refused admission to any of the rooms unless I had a warrant.

I again visited there several times about two months ago, to see Geo. Birdsall in connection with a burglary committed there.

On each of these visits I was received by George Birdsall at the head of the stairs in the hallway, the doors of all of the rooms were kept shut, and I could see no slot machines on the premises, nor could I observe whether or not there were any people in the place. [238]

JOSEPH H. GORHAM,

Sergeant of Police, Star No. 614.

"Received by Sergt. John M. Morrissey #386."

W I T N E S S.—(Continuing.) Some time in March, I received a complaint from the office of the Chief of Police that 1249 Polk Street was suspected of illegal selling of liquor. I received that complaint on March 26th or 27th, it was dated the 26th

(Testimony of John J. Casey.)

of March. Generally all of these complaints were received that way—I received them the day after they were dated and turned the complaint over to Sergeant Gorham. I instructed him to see if he could obtain any evidence on this place; it was probably around ten o'clock in the morning of March 27th that I turned this complaint over to Sergeant Gorham. After two or three days later, Sergeant Gorham told me he had gone to the place —that he had rung the bell there and got to the top of the stairs and met Birdsall, and Birdsall told him that he, Birdsall, lived there, and refused to allow him to go through the place. Gor*ha* then told me he went to the bond and warrant clerk's office and applied for a search-warrant, and Golden asked him if he had seen any liquor being sold or served on the premises, and he had told Golden that he had not. Thereupon, Golden refused to issue the warrant. I then took the complaint from Gorham and placed it on the clip for investigation by the sergeants and officers on the beat. That was practically the same conversation I had with him in October.

Some time in May or June, I could not state the exact date, a burglary had been committed at 1249 Polk Street and two men arrested, and the arresting officers appeared in court the following day. George Birdsall, I believe, was subpoenaed to appear as a complaining witness, but had refused to sign and swear to a complaint against them and the officers so reported to me. I instructed the of-

(Testimony of John J. Casey.)

ficers to obtain another subpoena for Birdsall or subpoena Birdsall, to appear in court, and for the arresting [239] officer to swear to the complaint, and put Birdsall on the stand, on the witness-stand. I do not remember that I talked to him about that after he had gone over to see Birdsall. I understand that this proceeding was complied with that Birdsall took the witness-stand and refused to prosecute. I do not at this time remember any other conversation with the defendant, Gorham, with respect to bootlegging investigation at 1249 Polk Street.

Officer Kissane took his vacation in 1924 from August 30 t*h* September 13th, inclusive; his days off being August 29th and September 14th. On the seventh day of October, 1924, I had a conversation with the defendant Eddie Marron. I interviewed him about 10:30 A. M. with reference to items in the memorandum book that was kept at 1249 Polk Street. I asked Marron if he was interested in or the owner of the premises at 1249 Polk Street and he told me that he was not, that he had disposed of his interests to George Birdsall a year ago September, and that Birdsall was paying him in monthly installments. I asked him if he ever paid any money to police officers there in any manner, or for anything, and he denied it. He said he had never paid any money to the police, and also said that he had visited the premises at 1249 Polk Street at different occasions—he denied that he ever saw Officer Kissane on the premises. I re-

(Testimony of John J. Casey.)

quested him to write the name of Kissane on a piece of paper—he also refused to sign any statement. Sergeant Gorham was with me when I had this conversation with Mr. Marron.

Q. I show you two sheets of paper, Captain Casey, and ask you if you recognize those?

A. Yes.

Q. By whom was that made, Captain Casey?

A. Sergeant Gorham.

Q. What is it?

A. It is a miscellaneous report on an investigation in reference to illegal sale of liquor at 1249 Polk Street.

Q. Made to you? A. Yes. [240]

Q. And received in your office?

A. It was received by Sergeant Morrissey and then turned over to me.

Mr. GILLIS.—I ask*ed* that it be introduced in evidence and marked Government's exhibit next in order.

(The document was marked U. S. Exhibit 36.)

I will read it:

"Police Department, City and County of San Francisco.

Police District No. 5. Bush St. Station.

San Francisco, Cal., Apr. 1, 1924.

Captain John J. Casey.

Sir: I respectfully report the following:

Subject: Complaint from Chief's Office Mar. 26, 1924, that the premises #1249 Polk St. is a bootleg joint.

(Testimony of John J. Casey.)

In response to above complaint, will state that #1249 Polk St. is a flat occupied by Mr. Geo. Birdsall as his residence.

Birdsall refused me permission to enter the place, and I applied to Bond and Warrant Clerk Wm. Golden for a search-warrant which was refused, as I could not testify that liquor was sold to me there.

The conditions under which a search-warrant would be issued, i. e. that liquor was sold to me, or to someone who would testify to the sale, or that liquor was in view of me before entering the premises would be sufficient to authorize an arrest by me without authority of a warrant.

I had Officer Ward who is not known to Birdsall attempt to enter this place to purchase liquor, but he was likewise refused admittance.

I will give this complaint continued attention, and take proper police action, when circumstances warrant same.

This place has been suspected of being a blind pig, and reported accordingly.

JOSEPH H. GORHAM,
Sergeant of Police, Star No. 614." [241]
Rec. by Sergt. John M. Morrissey, #386.
Respectfully referred to the Chief of Police,
CAPTAIN JOHN J. CASEY."

Q. I show you two attached slips of paper and ask you if you recognize that, Captain Casey?

A. Yes.

Q. That is signed by whom?

(Testimony of John J. Casey.)

A. By Sergeant Gorham.

Q. And is what?

A. That is a miscellaneous report in answer to a communication from the Chief of Police as to how Sergeant Gorham knew that this was Birdsall's residence.

Mr. GILLIS.—I ask that this be introduced in evidence and marked Government's exhibit next in order.

The COURT.—What is the date of it?

Mr. GILLIS.—October 15, 1924.

The COURT.—Go ahead.

Mr. O'CONNOR.—That is subject to the objection that it is not binding on the defendant Mahoney.

The COURT.—Yes.

Mr. GILLIS.—I will read it:

"Police Department, City and County of San Francisco.

Police District No. 5. Bush St. Station.

San Francisco, Cal., Oct. 15, 1924.

Captain John J. Casey.

Sir: I respectfully report the following:

Subject: Premises at #1249 Polk St. whether or not residence of George Birdsall.

In answer to communication from Chief of Police Oct. 14, 1924, regarding a report made by me April 1, 1924, in which I described the flat at #1249 Polk St., I will state that I made that report in answer to a communication from the Chief of Police given

(Testimony of John J. Casey.)

me to investigate, the substance of which was that liquor was being sold there. [242]

I knew nothing about this place at the time I went there, nor had I any idea as to who occupied or operated the place at that time.

This place is a flat of six rooms on the upper floor of a two-story building.

When I rang the bell and was admitted I met George Birdsall at the head of the stairs in his shirt sleeves.

It was at this time, that Birdsall informed me that he lived there, and his appearance, and furnishings in one of the rooms the door of which was open, furnished as a living-room with a chesterfield set, caused me to believe his statement.

When I stated my business, he refused permission to search the place, as per my report of April 1, 1924.

George Birdsall, knows me as a policeman for the past twenty years.

JOSEPH H. GORHAM,
Sergeant of Police.

Respectfully referred to the Chief of Police.

CAPTAIN JOHN J. CASEY,
#1."

The COURT.—Q. Did you know, Captain, at that time, that this man Birdsall had appeared in this court and plead guilty to selling liquor at that place?

Mr. SMITH.—What was the date of that report?

The COURT.—May 15, 1924. The sale of the

(Testimony of John J. Casey.)

liquor shown by the information is May 15, 1924. Did you know that? A. I did not.

Mr. O'CONNOR.—That is objected to on the ground it is not binding on the defendant Mahoney, that any knowledge of Captain Casey would not be binding on the defendant Mahoney.

The COURT.—Overruled.

Mr. O'CONNOR.—Exception.

Mr. SMITH.—Before the Court puts the question, might I ask what date the captain is testifying as to? [243]

The COURT.—The last report was October.

Mr. GILLIS.—He referred to a prior report of April 1.

The COURT.—Q. But at that time, in October, or at any other time after the 24th of May, did you know that Mr. Birdsall had appeared in this court and plead guilty to a charge of selling liquor and maintaining a nuisance at that place?

A. I did not.

Q. When repeated complaints are made against a place, do you investigate the records of this court to determine—when you are several times refused search-warrants by the bond and warrant clerk, do you make an investigation of the records of this court to determine whether or not—

Mr. KELLY.—If your Honor please—

The COURT.—I have not finished my question yet—to determine whether or not there is any record here of sales of liquor in that place against which complaint is made? A. I never have, no.

(Testimony of John J. Casey.)

The COURT.—What is the objection?

Mr. KELLY.—No objection.

Mr. GILLIS.—Q. Did you know of your own knowledge, Captain Casey, that 1249 Polk Street was a suspected bootlegging joint?

Mr. O'CONNOR.—That question is objected to on the ground it is not binding on the defendant Mahoney.

Mr. KELLY.—Objected to as not binding on any of the defendants, including the defendant Gorham.

Mr. SMITH.—As a matter of fact, what his suspicions are is purely incompetent.

The COURT.—The question here is whether or not these two members of the police force in charge of, or having that particular section of the city in charge, were acting in good faith in making these reports. I think I will overrule the objection.

Mr. SMITH.—Exception.

Mr. O'CONNOR.—Exception. [244]

A. I had received reports from the officers patrolling that beat that it was suspected as a bootlegging place.

Mr. GILLIS.—Q. Had you received any report prior to May 1 from Chief O'Brien's office, with reference to 1249 Polk Street as being a suspected bootlegging joint?

Mr. O'CONNOR.—The question is objected to on the ground it is not binding on the defendant Mahoney.

(Testimony of John J. Casey.)

The COURT.—I think that is covered by the reports.

Mr. GILLIS.—Q. I am asking you, Captain, if you had received any information or reports from Chief O'Brien's office.

The COURT.—He may answer.

Mr. SMITH.—It is purely hearsay.

The COURT.—It is overruled.

Mr. SMITH.—Exception.

Mr. O'CONNOR.—Exception.

Mr. GILLIS.—I am asking if he received such a report.

The COURT.—You may answer.

A. I received a communication from the chief's office about March 26th, stating that information had come to the office that the premises at 1249 Polk Street were suspected of selling liquor.

Mr. O'CONNOR.—I will ask that the whole of the testimony of the captain go out on the ground it is hearsay and not binding on the defendant Mahoney.

Mr. SMITH.—The same motion with respect to the defendants Marron and Birdsall.

The COURT.—Denied.

Mr. O'CONNOR.—Note an exception.

Mr. SMITH.—Exception.

Mr. GILLIS.—Q. Did you know of your own knowledge that it was a suspected bootlegging joint prior to March 1?

Mr. O'CONNOR.—The same objection. [245]

Mr. SMITH.—The same objection.

(Testimony of John J. Casey.)

The COURT.—The same ruling.

Mr. SMITH.—Furthermore, calling for the opinion and conclusion of the witness, and furthermore we urge that his suspicion would not be competent evidence at any rate.

The COURT.—The same ruling. You may answer.

Mr. SMITH.—Exception.

Mr. O'CONNOR.—Exception.

A. Prior to March 1?

Mr. GILLIS.—1924, yes.

A. I don't think I did.

Q. Did you ever visit that place, Captain?

A. Around the first part of March, I would say that it was some time around the first week of March I did visit that place.

Q. What was your purpose in visiting the place?

Mr. SMITH.—We object to that on the ground his purpose is not binding on any of the defendants.

The COURT.—Overruled.

Mr. SMITH.—Exception.

Mr. O'CONNOR.—The same objection as to the defendant Mahoney.

The COURT.—The same ruiing.

Mr. O'CONNOR.—Exception.

A. Just about that time somebody had spoken to me, either around the station or in the vicinity—

Mr. GILLIS.—I do not want any hearsay evidence, nothing that they spoke to you. I want your purpose in going there.

A. Well, that is how I received the information

(Testimony of John J. Casey.)

that the place—I was told that it was a bootlegging place.

Mr. SMITH.—May that go out, that "I was told that it was a bootlegging place"?

The COURT.—Yes. You went there because you believed it was? [246]

A. Yes.

The COURT.—That is sufficient.

Mr. O'CONNOR.—At this time I ask that the remarks of the Court be assigned as misconduct, and the jury instructed to disregard them.

The COURT.—Note your exception.

Mr. O'CONNOR.—Exception.

The COURT.—Go ahead.

A. I was passing there, and rang the bell, and was admitted and went upstairs, and I met George Birdsall there.

Mr. GILLIS.—Q. Did you have a talk with him?

A. I said, "Hello, Birdsall, I did not know that you were here," or words to that effect.

Q. What did he say?

A. If I remember right, I said, "This place is supposed to be bootlegging," and he passed some remark about living there—he was living there—he said that he was not doing any bootlegging.

The witness continued: The premises, 1249 Polk St., are approximately thirty feet from the corner of Bush Street on the west side of the street and the Bush Street police station is in the middle of the block on Pine Street between Polk and Van Ness Avenue. When I went to the prem-

(Testimony of John J. Casey.)

ises at 1249 Polk Street I met Mr. Birdsall at the head of the stairs—that was some time around the first of March. I said something like, "Hello, Birdsall, I didn't know that you were here." And I said something about, "This place is reported to me as being a blind pig, that you are bootlegging here." Birdsall denied it—said he was not bootlegging, and I asked him what he was doing there—and he said he was living there. I walked in as far as the kitchen door, to the right of the head of the stairs, and I stood there in the kitchen door talking to him; I told him, I says, "If you are doing any bootlegging here you [247] might as well *naje* up your mind you have got to quit it," but he maintained he was not doing any bootlegging there. That was the extent of our conversation. He went before me towards the kitchen. As much as I could see there, there was a stove off there to the north side of the room, a sink over in the corner, a little cabinet alongside of the sink, and a couple of bottles on the drainboard of the sink. There were no dishes in sight, and the bottles I saw on the sink looked *that* the ordinary wine bottle, or any bottles; there might have been two or three, I could not say at this time. It was between four and five o'clock in the afternoon and it was sometime around the 2d or 3d of March—somewhere around there. This was the extent of my conversation with Mr. Birdsall. I have known Birdsall for perhaps twenty years, but had not seen him before this time for a couple of years. He did not

(Testimony of John J. Casey.)

invite me into the house and I do not believe I saw any of the other rooms. When I left the premises I told him that if he was bootlegging around there, he might as well quit it, for if we got a case on him we intended to lock him up. Sergeant Gorham came to my command about March 7th or 8th, shortly after this conversation with Birdsall. My general instructions to him at that time were that we wanted the situation in reference to bootlegging, prosecution, illegal gambling and narcotics cleaned up. I did not give him any instructions in regard to 1249 Polk Street. I received the communication from the Chief of Police around March 27th, at which time I gave him the complaint and told him to go and see what he could do with it. I did not visit these premises again after the arrests had been made in October. Sergeant Gorham was assigned to the Bush Street Police District at my request by the Chief of Police for the purpose of assisting me in police matters. Sergeant Gorham's duties on an assignment under my command were as follows: He was in charge [248] of a special detail in the district—his duties being to investigate specific complaints from the chief's office, of which I received a great many letters complaining about several places, gambling, prostitution, bootlegging and investigating petty larcenies, and lost property reports, and general police work throughout the district.

Q. On October 7th, did you have a conversation with the defendant Birdsall? A. Yes.

(Testimony of John J. Casey.)

Q. Will you tell us what that conversation was?

Mr. SMITH.—Objected to on the ground the proper foundation has not been laid.

Mr. O'CONNOR.—Objected to on behalf of the defendant Mahoney on the ground it is a statement made after the termination of the conspiracy, and not binding on him.

The COURT.—That was after Mr. Birdsall's arrest, was it?

Mr. O'CONNOR.—Mr. Gillis in his opening statement, said that this conspiracy was ended on October 3d.

The COURT.—Q. Do you know if it was after his arrest?

A. I believe Birdsall was arrested there on October 2d.

Q. October 2d? A. I think so.

Q. This conversation would be after that arrest?

A. October 7th.

The COURT.—It would be admissible against Birdsall, anyway. It is overruled to that extent.

Mr. O'CONNOR.—Exception.

Mr. SMITH.—Exception.

A. I interviewed Birdsall at 1:00 P. M. on October 2nd, and he said he had purchased the place from Eddie Marron one year ago, and was paying for the same in monthly installments. I questioned him about a book found upon the premises, and certain entries made in the book, and Birdsall stated that the items referring to Bell, Wendler, Colonel Bivens 10 and Kissane 5, 1/19/24, Kissane 5, April

(Testimony of John J. Casey.)

[249] 6 Kissane 5, that those were moneys that were loaned to patrons of the place. I questioned him as to whether the party Kissane mentioned in the book was officer Kissane, and he said that it was not. I questioned him on its items, Gift $90, $60, and August 11 $150, Gifts P. L. and he said that referred to stock which he had given away at various times, and in this manner he made the entries in the book. He claimed that that was the only way in which he could keep account. I asked him what the letters "P. L." referred to, and he said that referred to profit and loss; the items of February or March, "Police $100," May, between 22 and 23, May 26, Police $60, June 22, Police $15, June 4, Police $150, June 29, Police $5, and Birdsall said that that was money that he was paying the people to protect his stock in transporting the stock; it was paid to protect stock from hijackers. I asked him if these men that he was paying to protect his stock were in any way connected with the police department, and he claimed that they were not, that they were men that he employed for that purpose.

The COURT.—How did they get the stock into that place without the police in any manner knowing about it?

Mr. O'CONNOR.—That is objected to on the ground that it is immaterial, irrelevant and incompetent, and not binding upon the defendant Mahoney, and highly improper.

Mr. SMITH.—In addition to that it is calling for the opinion and conclusion of the witness.

(Testimony of John J. Casey.)

The COURT.—Overruled.

Mr. SMITH.—Exception.

Mr. O'CONNOR.—Exception. At this time I desire to assign the question as misconduct, and ask the Court to instruct the jury to disregard it.

The COURT.—Note your exception.

Mr. O'CONNOR.—Exception. [250]

Mr. SMITH.—May the same objection and request be made on behalf of the defendants Marron and Birdsall?

The COURT.—Yes. Answer the question.

A. There was never a time that a police officer was stationed directly in front of that place, that is, a blockade placed in front of it.

Q. Why didn't you do that when these reports were made from the chief's office, and other places, that this was a bootlegging joint?

A. I had hardly sufficient men to blockade any place out there. The district comprises from the east line of Steiners Street to the east line of Leavenworth, and the center line of Market to the north line of Broadway; the average number of men on patrol in that district at any time on the 8 to 12 watch would not be over 12 or 13, and on the 4 to 12 and 12 to 8 watches would be the same; so that if I stripped the streets to blockade one of these places I would be leaving these business districts without proper police protection, and there are several banks there, seven branch banks, something like 12 or 13 schools to look after, school children, so it would be practically impossible to establish a

(Testimony of John J. Casey.)

blockade in front of the places that were suspected of selling liquor, it would be stripping the rest of the district, we have several crossings to take care of, traffic to look out for.

WITNESS.—(Continuing.) The total number of men under my command at the present time is 103. At that particular time in 1924 there were probably from 99 to 101 men under my command, and there were two men under the command of Sergeant Gorham. The hours of watch of Kissane were from 8:00 A. M. to 4:00 P. M. and his beat was Polk and Larking from Sutter to Broadway, the premises at 1249 Polk Street, being included therein. [251]

Cross-examination.

(By Mr. TAAFFE.)

In my conversation with Birdsall after his arrest on the premises at 1249 Polk Street, Birdsall said that he had never paid any money to any member of the police department, and that on several occasions officers visited the premises and made search for liquor, but were unable to find any. I asked Birdsall to write the words "Police" and "Kissane," which he refused to do, and he also refused to sign any statement. That was about the extent of the conversation I had with him. After the complaint was received from the chief of police and was referred back to me by Sergeant Gorham. I instructed the sergeants and officers on the beat to investigate and report, and take proper action, and report the result of their investigation. As a result of this order, reports were filed with me. I

(Testimony of John J. Casey.)

have not these reports with me at this time. They were received by me and forwarded to the chief's office.

Whereupon, the Court ordered that the examination of the witness be deferred until two o'clock, so that reports referred to could be produced.

(Rep. Tr., Vol. 3, pp. 182 to 196½, inc., and Vol. 4, pp. 197 to 208, inc.)

TESTIMONY OF D. W. RINCKEL, FOR DEFENDANTS.

D. W. RINCKEL was called as a witness on behalf of the defendant, and being sworn testified:

Direct Examination.

(By Mr. GILLIS.)

My position is that of federal prohibition agent and I have been such for about five years.

Q. Were you present at 2031 Steiner Street on October 24, 1923? A. Yes.

Q. What did you see there?

Mr. SMITH.—Just a second: We will object to any testimony with reference to what occurred at 2031 Steiner Street on October 24, 1923, [252] for the reasons heretofore urged in the petition to suppress evidence and a plea in bar. The situation that arose, I believe, at the opening of this trial, with reference to another raid at 1249 Polk Street is identically this one, now, with reference to which the district attorney is attempting to elicit information. At 2031 Steiner Street an arrest was made

at the date given by the district attorney in the question, and Mr. Marron was arrested; thereafter, he came before this Court, entered a plea of guilty, judgment was imposed and judgment satisfied. He has been once in jeopardy as to any offense that he may have been guilty of as of that time, and we submit that any evidence that would be received at this time would be prejudical as to him, and would be tantamount to placing him in jeopardy a second time for a single offense.

The COURT.—Mr. Smith, does the conviction for an overt act bar prosecution for conspiracy?

Mr. SMITH.—In a matter reported, I believe, Goldstein vs. The People, or The People vs. Goldstein, I think it is, reported somewhere about as far back as 32 California, the rule was laid down and it has been followed in this court, followed quite recently by his Honor Judge Kerrigan, that where the same evidence was necessary in order to obtain a second conviction, the introduction of the evidence that has been introduced in the previous proceeding could not be introduced in the second, for the reason that the man has been once in jeopardy.

The COURT.—Of course, that is so, but a conspiracy charge such as this presupposes a long series of acts; if we could imagine a conspiracy which is followed by overt acts after overt acts, and some of the conspirators might have been arrested and charged and convicted or pleaded guilty to some of the overt acts, that would not in any wise affect a

prosecution for conspiracy. The Courts of Appeal throughout the country have held that on numerous occasions, [253] and to hold that the things that are done under a conspiracy are not admissible for the reason that some of the overt acts have resulted in arrests and convictions, it seems to me is contrary to the whole principal of the law of conspiracy. I will hear you, however, if you have anything further to offer on it.

Mr. SMITH.—Yes. I was present when the matter was argued by a learned counsel before the Circuit Court in the matter of Levin vs. The United States of America, that is on appeal at the present time. At that time, various authorities were offered to the Circuit Court and I have that brief. I do not see any necessity for going into the matter deeply at this time, but I will submit the brief.

The COURT.—I tried the Levin Case.

Mr. SMITH.—I know that you tried it.

The COURT.—They were not charged with conspiracy.

Mr. SMITH.—No, but the same proposition arose, they were charged with making a false return, and with perjury; it was contended by counsel in that case that one offense took in the other, and that both things occurred at the same time; the Income Tax Law provided that anyone who made a false return would be punishable in such and such a way, and then the Criminal Code of the United States defined perjury; it was contended by counsel that the two crimes were merged

into one crime by reason of the fact that one was denounced in the income tax law itself. In that indictment, which was set out in two counts, a conviction was had on both counts. Counsel in that case contended that a conviction of the first was a bar to the conviction on the second, because the defendants had been once in jeopardy. It is identical. on the same ground.

The COURT.—Even if that contention were correct, it has no application, even the remotest, to this situation, because if that is correct it would be upon the theory—I remember the cases were submitted at the time the case was tried, and again on the motion [254] by different counsel. on the motion for new trial. If that were so it would be upon the theory of those cases which hold that where the same state of facts constituted two specific crimes under the federal statute, a man could be prosecuted only on one, and a conviction under this state of facts of the one is a bar to the other. That is an entirely different thing from a conspiracy. While it is true that the statute, that is, Section 37 of the Criminal Code, provides that the Government, in order to establish a conspiracy, must show an overt act, still the Supreme Court and the various courts of appeal have time and again held that the overt act is not the essence of the charge; that the gist of the crime is the conspiracy, itself, and that the statute, in requiring an overt act simply provides, contrary to the common law of England, and contrary, indeed, to many of our own statutes, such as

the Sherman Act, in the United States, the Cartwright Act in California, where the mere gathering together and the meeting of minds and an agreement to do an illegal act is a crime, whether the legal thing be done or not—but that is not the provision of Section 37. Section 37 is that men might conspire with perfect freedom so long as they do not do anything as a result of the conspiracy; but the minute they do, then the essence, or gist, or real *corpus delicti* is the fact that they entered into the legal agreement; and, of course, it is elementary and fundamental, on a charge of conspracy, no conviction can be had of the specific acts, no matter how many or how heinous they may be; therefore, the Supreme Court has several times said that the the overt act is no part of the *corpus delicti*, but is rather evidence of the fact that the conspiracy was entered into and carried out. I think it is clear. I will overrule it.

Mr. SMITH.—There is just one further authority I would like to submit, the case of United States vs. Weiss, 293 Fed. 994, where the Court said: "At the threshold it must be noted that the [255] Government cannot split up one conspiracy into different indictments and prosecute all of them, but that prosecution for any part of a single crime bars any further prosecution based upon the whole or a part of the same crime." Then citing Murphy vs. U. S., 285 Fed. 804, at page 816; In re Snow, 120 U. S. 274.

The COURT.—That is absolutely true, there is no question about it, but that does not affect this situation in the least. Of course, if two or more men entered into a conspiracy and did an overt act —for instance, we had the Nan Patterson case here, where overt acts were committed both before and after the arrest, and if that defendant had been charged with a conspiracy resulting in the first overt act, and charged with the conspiracy resulting in the succeeding overt act, and she had been twice charged with the conspiracy, the evidence showing that the conspiracy was one continuing thing, of course she could not be convicted of both, for the very simple reason that I have pointed out, and that is the conspiracy itself is the *corpus delicti.*

Mr. SMITH.—Might I ask the Court just this one question, so that I may be able to follow the Court: Suppose that this indictment simply stated the one overt act of conspiring to maintain a nuisance at 2031 Steiner Street, and set out no overt act, and the evidence introduced here was limited to the matters that are now attempted to be elicited from this witness by the Government, would the Court in that case rule that evidence of what took place at that time of matters that had been before this court for which the defendant has pleaded guilty, would be admissible.

The COURT.—I have no question about it.

Mr. SMITH.—We note an exception.

The COURT.—You may answer.

(Testimony of D. W. Rinckel.)

A. I went there by virtue of a search-warrant, and upon searching found a quantity of liquor. [256]

Mr. GILLIS.—Q. What did you find?

A. Altogether, there were 150 gallons of wine, three one-fifth gallon bottles of jackass brandy, two one-half gallon bottles of jackass brandy.

Q. Do you know whose place that was?

A. It was Eddie Marron's.

Mr. GILLIS.—That is all.

Mr. SMITH.—No questions.

Mr. GILLIS.—We offer in evidence the record of this Court in case No. 13,362, which is a record of the information, plea of guilty, and payment of fine.

The COURT.—As to this last place that you speak of?

Mr. GILLIS.—As to the last place.

The COURT.—All right; admitted.

(Rep. Tr., Vol. 4, pp. 209 to 213, inc.)

(Said record of action No. 13,362 was thereupon admitted into evidence and said record shows that defendant Joseph E. Marron, *alias* Eddie Marron, pleaded guilty to a violation of the National Prohibition Act on April 4, 1924; and was thereupon fined the sum of $400, which said fine was paid on April 14, 1924.)

TESTIMONY OF F. D. STRIBLING, FOR THE GOVERNMENT.

F. D. STRIBLING, a witness called on behalf of the Government, being sworn, testified as follows:

My name is F. D. Stribling and I am by occupation an Internal Revenue Chemist for the U. S. Government.

Q. I show you bottle numbered 27,940 and ask you if you have examined that to determine the alcoholic content? A. I have.

Mr. O'CONNOR.—Just a moment. That is objected to as immaterial, irrelevant and incompetent, and there is no showing here that this liquor here that the chemist is about to testify to is the same liquor which was seized at any of these places, and was turned over to him. [257]

The COURT.—Overruled.

Mr. O'CONNOR.—Exception.

Mr. SMITH.—May that same objection go to the defendants Marron and Birdsall, with the objection that there has been no proper foundation laid?

The COURT.—Yes. [258]

Mr. SMITH.—Exception.

A. 5.37 per cent alcohol by volume.

Mr. GILLIS.—Q. What does that make the proof? A. That makes the proof 11.7.

Q. The proof is always double the alcoholic content? A. Double the alcoholic content.

Q. Is it fit for beverage purposes. A. Yes.

Q. Where did you receive that bottle?

(Testimony of F. D. Stribling.)

A. At the laboratory—

Mr. SMITH.—We will object to that question on the ground it calls for the conclusion of the witness.

The COURT.—You have sufficiently identified it, Mr. Gillis. The officer testified that this was found at one of these places involved, and he testified that he had it and examined it.

Mr. GILLIS.—I ask that that be introduced in evidence and marked Government's Exhibit next in order.

Mr. O'CONNOR.—To which we object on the ground it is immaterial, irrelevant and incompetent.

The COURT.—Overruled.

Mr. O'CONNOR.—Exception.

Mr. SMITH.—Yes.

(The bottle No. 27,940 being a pint bottle about 1/3 full of Rainier Beer was thereupon admitted into evidence and marked U. S. Exhibit 8.)

Mr. GILLIS.—Q. I show you bottle numbered 26,733, and ask you if you examined that to determine the alcoholic content? A. I have.

Mr. O'CONNOR.—The same objection.

Mr. SMITH.—May we have the same objection and exception to all of these?

The COURT.—Yes.

Mr. GILLIS.—What is the alcoholic content?

A. 4.87 per cent by volume, alcohol by volume.

Q. Fit for beverage purposes? A. Yes. [259]

Mr. GILLIS.—I offer it in evidence and ask that it be marked Government's Exhibit next in order.

(Testimony of F. D. Stribling.)

(The bottle No. 26,733, being a pint bottle about one-half full of Cascade Beer was thereupon admitted into evidence and marked U. S. Exhibit 24.)

Q. I show you bottle 27,160, and ask you if you have examined that for its alcoholic content?

A. I have.

Q. What is it? Has the clerk pasted over your label?

A. That has a memorandum over it. I can get it.

Q. All right. A. I have no record of 27,160.

Q. All right, we will put that to one side. I show you bottle 26,792, and ask you if you have examined that for the alcoholic content? A. I did.

Q. What is it?

A. 44.1 per cent of alcohol*ic* by volume.

Mr. GILLIS.—I ask that that be introduced in evidence and marked.

(The bottle No. 26,792, being a one-fifth gallon bottle full and labeled Gin was thereupon admitted into evidence and marked U. S. Exhibit 28.)

Q. I show you bottle 27,156, have you examined that? A. I don't remember this one.

The CLERK.—That has not been marked for identification.

A. I probably made a mistake when I identified this other one, here.

Mr. GILLIS.—Q. This one?

A. No, that one, that I had no record of.

(Testimony of F. D. Stribling.)

Mr. O'CONNOR.—Q. You did not identify that one, I don't think? A. No.

Mr. GILLIS.—I think this is not part of the evidence. The label shows it is not.

Q. I will show you bottle 26,791, and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 44.35 per cent alcoholic by volume.

Mr. GILLIS.—I ask that that be introduced in evidence and marked.

(The bottle No. 26,791, being a one-fifth gallon bottle full of rum was thereupon admitted into evidence and marked U. S. Exhibit 27.)

Q. I show you bottle No. 26,734, and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 12.26 alcohol by volume. [260]

Mr. GILLIS.—I ask that this be introduced in evidence.

(The bottle No. 26,794, being a one-fifth gallon bottle one-half full of Victor Cliquot Champagne was thereupon introduced into evidence and marked U. S. Exhibit 30.)

Q. I show you bottle 26,790 and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 44.86 per cent alcohol by volume.

Mr. GILLIS.—I ask that that be introduced in evidence.

(The bottle No. 26,790, being a one-fifth gallon

(Testimony of F. D. Stribling.)

bottle full of Scotch Whiskey was thereupon introduced into evidence and marked U. S. Exhibit 26.)

Q. I show you bottle 26,733A and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 50.25 per cent alcohol by volume.

Mr. GILLIS.—I offer that in evidence.

(The bottle No. 26,733A, being a one-fifth gallon bottle full of Bourbon Whiskey was thereupon introduced into evidence and marked U. S. Exhibit 23.)

Q. I show you bottle 26,793, and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 50.04 per cent alcohol by volume.

Mr. GILLIS.—I ask that that be introduced in evidence.

(The bottle No. 26,793, being a one-fifth gallon bottle full of Bourbon Whiskey was thereupon introduced into evidence and marked U. S. Exhibit 29.)

Q. I show you bottle 27,938, and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 50 per cent alcohol by volume.

Mr. GILLIS.—I ask that that be introduced in evidence.

(The bottle No. 27,938, being a one-fifth gallon bottle one-half full of Bourbon Whiskey was thereupon introduced into evidence and marked U. S. Exhibit 6.)

(Testimony of F. D. Stribling.)

Q. I show you bottle No. 27,937 and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 17.6 per cent alcohol by volume.

Mr. GILLIS.—I ask that that be introduced in evidence. [261]

(The bottle No. 27,937, being a one-fifth gallon bottle full of Sherry Wine was thereupon introduced into evidence and marked U. S. Exhibit 5.)

Q. I show you bottle 26,569, and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 18½ per cent alcohol by volume.

Mr. GILLIS.—I ask that that be introduced in evidence.

(The bottle 26,569, being a one-fifth gallon bottle full of Sherry wine was thereupon introduced into evidence and marked U. S. Exhibit 22.)

Q. I show you bottle 27,936, and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 19.96 per cent alcohol by volume.

Mr. GILLIS.—I ask that that be introduced in evidence.

(The bottle 27,936, being a one-fifth gallon bottle full of port wine was thereupon introduced into evidence and marked U. S. Exhibit 4.)

Q. I show you bottle 28,004, and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 5.3 per cent alcohol by volume.

(Testimony of F. D. Stribling.)

Mr. SMITH.—I ask that that be introduced in evidence.

(The bottle No. 28,004, being a one pint bottle one-third full of Vermuth was thereupon introduced into evidence and marked U. S. Exhibit 13.)

Q. I show you bottle 26,798 and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 52.49 per cent alcohol by volume. [262]

Mr. GILLIS.—I ask that that be introduced in evidence.

(The bottle No. 26,798, being a one-fifth gallon bottle full of Jackass Brandy was thereupon introduced into evidence and marked U. S. Exhibit 25.)

Q. I show you bottle No. 27,939, and ask you if you have examined the alcoholic contents of that?

A. I have.

Q. What is it?

A. 12.12 per cent alcohol by volume.

Mr. GILLIS.—I ask that that be introduced in evidence.

(The bottle No. 27,939, being a one pint bottle one-third full of Champagne was thereupon introduced into evidence and marked U. S. Exhibit 7.)

Q. I show you bottle numbered 28,002, and ask you if you have examined that? A. I did. [263]

Q. What is the alcoholic content?

A. 44 per cent of alcohol by volume.

Mr. GILLIS.—I ask that that be introduced in evidence.

(Testimony of F. D. Stribling.)

(The bottle No. 28,002, being a one and one-half pint bottle full of Rum was thereupon introduced into evidence and marked U. S. Exhibit 12.)

Q. I show you bottle 28,001, and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 45.6 per cent alcohol by volume.

Mr. GILLIS.—I ask that that be introduced in evidence.

(The bottle No. 28,001, being a one-fifth gallon bottle one-third full of Canadian Club Whiskey was thereupon introduced into evidence and marked U. S. Exhibit 11.)

Q. I show you bottle numbered 27,999 and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 49.3 per cent by volume.

Mr. GILLIS.—I ask that that be introduced in evidence.

(The bottle No. 27,999, being a one-fifth gallon bottle full of Gordon Gin was thereupon introduced into evidence and marked U. S. Exhibit 9.)

Q. I show you bottle numbered 28,003, and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 19.26 per cent by volume.

Mr. GILLIS.—I ask that that be introduced in evidence.

(The bottle No. 28,003, being a one-fifth gallon bottle one-third full of Vermuth was thereupon in-

(Testimony of F. D. Stribling.)

troduced into evidence and marked U. S. Exhibit 13.)

Q. I show you bottle 28,000 and ask you if you have examined that? A. I have.

Q. What is the alcoholic content?

A. 38 per cent of alcohol by volume.

Mr. GILLIS.—I ask that that be introduced in evidence. [264]

(The bottle No. 28,000, being a one-fifth gallon bottle one-half full of Scotch Whiskey was thereupon introduced into evidence and marked U. S. Exhibit 10.)

Q. All of these liquors that you have testified to here are fit for beverage purposes? A. They are.

Mr. GILLIS.—That is all.

Mr. SMITH.—No question. [265]

TESTIMONY OF E. O. HEINRICH, FOR THE GOVERNMENT.

E. O. HEINRICH, a witness called on behalf of the Government, being sworn testified as follows:

Direct Examination.

(By Mr. GILLIS.)

My name is E. O. Heinrich, and my business is examiner of suspected and disputed documents, practicing as a legal chemist, and microscopist. My office is in San Francisco and my residence and laboratory in Berkeley. I am a graduate of the University of Berkeley, College of Chemistry. I was consulted first in this case by Mr. Oftedal of

(Testimony of E. O. Heinrich.)

the Customs Intelligence Unit, and later confirmed and ratified by the office of the United States Attorney. I have been practicing my profession for twelve or thirteen years. I have testified in federal cases of the States of California, Oregon and Washington, Army Courts in the Western Department at San Francisco, and State and District Courts in all of the States of the west, west of Denver, except Wyoming and New Mexico. Whereupon the Court deemed the witness qualified as an expert. I have made an examination of Government Exhibit 3, Government Exhibit 32, Government's Exhibit 31 and the slips of paper that are contained in Government's Exhibit 17, and Government's Exhibit 18. I have examined and compared the handwriting and have prepared certain illustrations therefrom. These illustrations are photographic illustrations of various features of the writing which illustrate the course of my reasoning and conclusions.

Mr. SMITH.—May it please the Court, in order that we might have fully developed how he arrived at this conclusion, it seems to me we should first have his reasons, because his reasons may prevent an answer later on; he may not be qualified. We may show he is not qualified to judge, after giving his reasons.

The COURT.—Mr. Smith, you know the settled procedure in these cases. The examination of any expert is always a conclusion. The party presenting him does not have to ask him for his rea-

(Testimony of E. O. Heinrich.)

sons unless [266] they want to. He is then subject to the fullest cross-examination as to the basis of his reasons. That is settled practice. Overruled.

Mr. SMITH.—Exception.

WITNESS.—I have examined all of the exhibits just shown me and have come to a conclusion as to who wrote the writing that is contained in Government's Exhibit 3 from page 34 on. The majority of the entries, 90 per cent, or more of the entries which represent transactions or which represent business memoranda—

Mr. SMITH.—We will object to that on the ground that it is calling for matters that have not been shown to be within the particular knowledge of the expert.

The COURT.—Overruled.

Mr. SMITH.—Note an exception.

A. —were written by the same person who signed Government's Exhibit No. 32, with the name "Joseph E. Marron" and the address "2031 Steiner Street."

Mr. GILLIS.—Q. Now, from an examination of the exhibits that you have made have you arrived at an opinion as to who wrote on the slips of paper contained in Government's Exhibit 17 A. Yes.

Q. Who wrote them?

A. They were written by the same writer who signed Government's Exhibit 31 with the name "George Leo Birdsall" and the address "519 Belvedere Street."

(Testimony of E. O. Heinrich.)

Q. Will you now, Mr. Heinrich, using your photographic illustration explain and show how you arrived at that conclusion?

A. In one of the answers that I gave I said that the majority of the writing, beginning with page 34, was by the writer who wrote the signature to Government's Exhibit 32. That answer referred to the words which are in the respective columns and to the dates and amounts which are set opposite them, and except such items as appear in the footings of the columns on the majority of the pages, and various check marks which occur opposite certain entries running throughout these pages. Now, the first point that I wish to illustrate is that I found on examining this book that the writing was of a uniform appearance [267] throughout the book, beginning with page 34, or one or two pages earlier, and that it had the same features of a cramped style, the same general appearance as to the condition of the page, the manner of inserting in the writing space the same appearance of roundness of the various letters, and I found on further examining into that that this writer wrote on a system which was such that the small letters, take the letter "a" for instance, if measured and blocked out, would fit into small squares, as opposed to other writing systems and other methods of writing in which writers are taught to place the letters, make the letters so that they would be enclosed in a rectangle whose sides are longer than the base and top. In addition

(Testimony of E. O. Heinrich.)

to that squareness of the small letters, there was a standard regular enlargement, an ovality of the loops of the letters "g," "y" and "z," and such letters as have loops below the line. These pages that I have put on here are pages, illustrations of pages 34, 42, 80 and 93, in their entirety. They were not especially selected, but have been taken for the purpose of illustrating what all of the pages in that book, beginning with page 34, look like, and how they look of their general appearance, and the general feature of the writing all resembling each other. That is without reference to who wrote them, the point being that the same person who wrote 34 also put the same identical appearance and manner of construction in the writing appearing on page 42 and page 80 and page 93, and all of the pages intervening, so that with the exception of these points that I have already mentioned the figures which appear in totals and check marks such as would be made in auditing an account of this kind, the writing is all of one and the same person. Now, in order to illustrate that more definitely, I have another set of exhibits in which the writing is made very much larger. Those I wish to put on the board now. On investigating more closely the general appearance of similarity between the respective pages, and considering the reason for the appearance of [268] the cramped style in the writing, I found that the writing was executed with a movement limited largely to the action of the fingers, and that it included in that move-

(Testimony of E. O. Heinrich.)

ment a definite, incomplete but regular and smoother turn to the corners of the writing in making the oval turn from left to right or right to left, and that showed particularly in the upper right-hand corner of the oval turn. I found as a starting point an entry at the top of page 82 which had the two letters reading "Personal Ed" and "I. O. U" over the left-hand column of the page. Now, on examining that writing, I found in the "P" of "Personal," in the upper right-hand corner of that oval turn a definitely defined inco-ordination of the writing I have mentioned at that point, with the result that the characteristic tremor or flattening of the letter there is definitely shown. My inquiry there was to determine whether the person who had written "Personal" had also written "I. O. U.," and I found, in considering that same oval movement, in the capital I, that that same inco-ordination was shown in the upper right-hand quadrant or portion of the oval movement at the tip of the "I," and that we get the corresponding flattening on that movement. That is, to me, conclusive evidence of one and the same hand writing the entries. The writing of the word "Personal" is continuous, the condition and pressure of the pencil on the paper is in complete harmony throughout with that shown in the letter "P" of that word, and is true for the name "Ed," and the initials "O. U." following "I." I found on these grounds that the entire entry "Personal Ed" and the next letters reading "I. O. U." were writ-

(Testimony of E. O. Heinrich.)

ten by one and the same person, independently now of who that person may have been.

Mr. SMITH.—So that there will be no question as to the rights of Marron and Birdsall, I would like the record to show that all of this testimony goes in over their objection.

The COURT.—Overruled.

Mr. SMITH.—Note an exception. The objection being the same as was [269] urged at the time of the introduction of the book and the other documents.

The COURT.—All right. You may proceed, Mr. Heinrich.

Mr. O'CONNOR.—I understand the documents have not been offered in evidence. Isn't that correct?

Mr. GILLIS.—They have not yet been, but I shall offer them in evidence.

A. Having called attention at the close of the morning session to my conclusion that the first two entries on the left-hand side of page 82, reading "Personal Ed" and "I. O. U." were written by the same person, independent of who that person may be, I want, in addition, to call attention, in passing, to the emphasis given to the terminal of the stroke of the "l" in "Personal," and the "d" in "Ed," and will again call attention to it in connection with some other writing.

Now, the group "I. O. U." includes a very highly developed manner, characteristic manner of forming a capital "O"; the closing movement is dropped

(Testimony of E. O. Heinrich.)

down below the top in such a manner that it may be considered, for the purpose of illustration, as either a poorly made "O" or a poorly made digit "6." Going to the other side of the page, the right-hand column, we find in the upper portion of the column the words "Money out, Wendler check, Argyle." In the word "Out," we find identically the same formation of the capital "O" as we found above in the entry "I. O. U." and the manner of shading the turn at the base of the letter, and the pressure emphasis throughout that movement is the same in the "O" in the entry "Money Out" as it is in "I. O. U." In comparing the word "Money" with the word "Personal," we find in the word "Money" the group "On" appearing as a replica of the group "on" in the word "Personal." In addition to the capital "O" identified in "Out," and the "on" identified in "Money," there also is the individualized manner of [270] making an "e" without having a loop, it is a collapsed letter, just as appears in the word "Personal." On that basis, I found that "Money Out" was written by the same person who wrote "Personal Ed" and "I. O. U." I notice in this word "Money" that on the clockwise turn over that oval movement that this writer does succeed in making that curve voluntarily as against loops as shown in "Personal" and "I," and this writer has the ability, as shown in this word "Money," to make that movement properly, and, as the book shows elsewhere, with considerable frequency.

(Testimony of E. O. Heinrich.)

Now, regarding "Money" and comparing it with "Wendler Check" appearing immediately below, we have the collapsed "e" appearing and also terminal "y" in "Money," in the collapsed "e" appearing before the terminal "r" in "Wendler," and we have the "d" construction, the "a" portion of it corresponding completely in its proportion, the initiation of the movement and form with the "a" in "Personal"; we have the collapsed "e" again appearing in "Check," and we have, in addition to that, the "d," which is a letter which is sought to be written shorter than the "l" appearing at the same height as the "l" just as it does in "Personal Ed," giving us "Wendler, Check," as also having been written by the same person as the foregoing, and allowing us to proceed to "Argyle," where we have first the terminal movement in closing the "e" at the end of the word that you see in "Personal," and "Ed," the same "a" construction, both in the "a" and the initial oval of the "g" as appears in the "d" in "Wendler" and the "a" in personal; also, we have the same enlargement in "Money" in the words "Money Out." On these identities, it was my conclusion that this portion of the page had been written by the same person who wrote the initial entries on the page, reading "Personal Ed I. O. U."

That gave me, in addition to the character of the alphabet found in the first entry, certain characteristic forms affecting other letters. [271] We have the terminal "t" in the word "Out," crossed

(Testimony of E. O. Heinrich.)

in an individualized manner, both as to the manner of effecting the "t" crossing by bringing it up with a continuous movement from the stroke of the letter to the left side and then crossing over and terminating with a heavy pressure at the end of the stroke. We have the individualized manner of making the loop in the letters having the loop below the line; and we have introduced the capital "W" with the same type of individualized leading stroke, and "k" having as its feature the absence of the properly formed loop in the upper portion of the letter, and a heavy terminal stroke similar to the terminal of the "l" and "d" in the word "Personal Ed"; we have also added the letters "Ch," "g," "y" and "r," in a slightly different formation from the ones appearing above. Now, in comparison with this I have brought a section of page 100, a section of the handwriting which appears in the right-hand corner of page 100, and which begins with the word "Yeager" and ends with the word "Joseph." By referring now to the words which I have previously described and noting the identities, I find first of all in the word "George Kent" the same individualized terminal "t" which I have illustrated in the word "Out." I find the same collapsed "e" in the word "Kent" that we have already noted in "Wendler Check," "Money," and "Personal," and we also see that in the abbreviation for "George"; we see the same thing in "Yeager," the collapsed "e" preceding the terminal letter; and in the two words immediately above

(Testimony of E. O. Heinrich.)

the "George Kent" a letter with a loop below the line, the loops being formed in the same manner and with the same proportions as those appearing in "Argyle" and "Money," the capital "y" in "Yeager" and capital "M" in the next word, which has the same initial features as the "M" in "Money," and the "W" in "Wendler," in the exemplar taken from page 82, together, also, with the terminal pressure increasing to the end, at the end of the "r's" in the first two words. [272] This extends also to the words which through the deletion appears to me to be "Englander," where we have the same enlarged feature of the loop, the lower case letter, the same excessive terminal pressure on the end of the stroke, the same relation of the height of the "d" to the rest of the word, and the same proportion of the "E" as we have already noted in connection with "Ed" and "Personal"; also, in the abbreviation "Pd," the same relation of the "d" to the capital letter, particularly in the first one, where it appears taller; the same direct downward terminal in the abbreviation for August, the same manner of enlargement of the loop of the "g," and closing it as shown in the "y" of "Money"; that is still further carried out in the word "Joseph," where we have first the terminal made in the same identical manner as the terminal in "Yeager," and the same shaped "g," made in the same identical manner as far as the stem, the lower loop are concerned, with the "P" in "Personal," the initial stroke being added

(Testimony of E. O. Heinrich.)

here by reason of its position in the word; the same collapsed "e" that we have noted already again appearing in "Yeager," on the same shading, the same manner of hooking in one the "r" on the terminal as appears in "Personal"; and by these characteristics which appear also in the previous writing, I find that this writing is by the same writer who wrote the entries on page 82, giving me now, in addition to the letters heretofore compiled of the alphabet, the letters "K" in Kent which is a highly individualized letter, including, as one of its features, a co-ordinated movement in the first stem, a very highly individualized "G," in which the initial loop is shorter than is regularly taught in the writing system, and the initial loop is no higher, or very little higher than the shoulder on the right-hand side of that letter. The additional letters that are picked up are "J" in "Joseph," the "Y" in "Yeager," and the "P" and the "A." Now, proceeding to the next illustration which is selected from [273] Page 104, right-hand column of that page, we have the word, "Kissane" appearing above the line reading, "Papers, Lemons," and the next line reading, "Grenadine," we have in "Kissane" a repetition of the same "K" that we found in "Kent," we have the repetition of the same terminal movement that we have heretofore seen in "Argyle" and "Personal," the same feature of the formation of the "s" that we have already seen in "Joseph" and in "Personal," and the same absence of the "i" dot, the manner of

(Testimony of E. O. Heinrich.)

forming the "i," and in the word "Papers" we have again the same heavy terminal on the "r" with a collapsed "e" immediately preceding it that we find in "Yeager" and "Wendler," the "P" formed in the identical manner as to its formation, as the "P" in "Personal," the "A" construction paralleling the "A" in other words above, such as "Argyle" and "Personal," and the enclosed "P" in Papers following the same formation, that is, the upper stem connected with the preceding letter, a loop below the line, and closing with a buckle formed in a manner as we find in "Joseph," a little more cramped in, but, nevertheless, of the same form.

Going below to "Grenadine," we have there a repetition of the capital "G" which we found in "George Kent," and the other letters, having the same loop that we have already seen in the other words. These specimens which I have selected here are illustrative of the manner in which I proceeded to go through the book, starting with the individualized instances, and finding in the book the co-ordination feature appearing on two successive lines, where the movement was similar, as appears in the words, "Personal Ed" and "I. O. I.," giving me a feature of the personal writing habit, which is due to a certain writing habit over which the writer has no control. By following these features as I have compiled them here, I found that they were regularly repeated page for page, without any more variation than that variation, which is normal

(Testimony of E. O. Heinrich.)

to any person's writing, without effort or disguise, [274] and having all the same characteristic appearance. I found on each page, in addition to what I have pointed out, that all of this writing had a certain hall mark, as it were, an individualism which is so constant that it serves to identify the writing almost the instant at which it is seen, and that is the heavy terminal pressure of which I have several appearing on certain letters, appearing on all these letters, or many of these letters, most of these letters which have a terminal movement to the right, at the close of the word.

Going now to the next illustration which is taken from page 103, which reads, "1 Vermuth" down to the words, "1 Set" opposite the date "30," I have here a group of the terminal features of which I have spoken, and in which it appears that characteristic, and I refer particularly to that pressure at the end of the stroke which gives to the terminal stroke a club-like feature; most writers, in writing, are at that point in the act of lifting the writing instrument from the paper, with the result that we have there a diminished line, a line coming to a point. This writer does not do that; he comes to a full stop, with a writing instrument on the paper, and with a pressure increasing to that point. The result is that we have a club-like formation on his terminals, such as is shown in the word "Rainier," in the abbreviation "Bourb," in the word "Club," again, in the word "Beer," again, the abbreviation "Bourb," again, in the word "Beer," again, in the

(Testimony of E. O. Heinrich.)

word "Club" and it is also present in the "t" crossings appearing with considerable frequency. In the next illustration, taken from page 91, in the first word "Set," that same club-like feature occurs in the crossing of the "t," and it appears in the terminal of the word "Club" immediately above it, and it appears in the terminals of the illustrations taken from page 103. Now, we have here these other sheets for example, the peculiar manner of finishing the terminal "t" illustrated in the word "Set," on both the illustrations taken from page 103 and 91; in the illustration from page [275] 91 it occurs also in the word "Port"; the writer shows in the word "Set" that at times he will make a normal "t" crossing in the terminal position, but the frequency with which I found the manner in which the "t" occurs is continuous from the foot of the letter up to the position for crossing the vertical stroke, and then across, that that is the habitual way of doing it, and identifies the writer as being the same person who wrote the word "Out" on the previous exhibit. In this manner I have identified the writing on all of the pages that I have enumerated, from page 31 on, not all of the writing, but the major portion of the writing, amounting to about 90 per cent of it, on the pages, on many pages, much more and on one or two pages somewhat less, but the average being over 90 per cent, the writing of this particular writer. Now, you will notice here with this other exhibit that I have also picked up additional letters of the alphabet, and in this way

(Testimony of E. O. Heinrich.)

I have built up for the purpose of the examination the entire alphabet of this writer. I then compared this writing with the writing which appears on Government's Exhibit 32, and in particular with that portion of the exhibit which reads, "Joseph E. Marron, 2031 Steiner Street," and that portion of the exhibit appearing as a signature to an affidavit of registration. I also had before me a photographic copy of an affidavit of candidates, which is marked Government's Exhibit 18, and which also has the signature, "Joseph Edmund Marron." I brought these signatures as they appear on this exhibit together on a photographic enlargement of the same character as those I have been discussing, together with the address as it appears on the affidavit of registration. First of all, I wish to call attention to the hall mark on the terminal, of which I spoke in connection with the other writing, in the word "Steiner," and in the word "Marron," and particularly in the word "Steiner" there appears that terminal pressure on the end of the [276] stroke which is individualistic to the writer who has written the exhibits that I have been discussing, and which shows itself by the two occurrences in the names "Marron" and "Steiner," and slightly less developed in the word "Joseph," as being a feature of this writer's handwriting.

Mr. GILLIS.—Pardon the interruption, Mr. Heinrich: The top [277] "Joseph Edmund Marron" that appears upon that sheet that you have

(Testimony of E. O. Heinrich.)

just placed upon the blackboard, is that written in ink, or pencil?

A. That was written in ink and is the manner in which that signature was written on the affidavit of candidates, Government's Exhibit No. 18, as shown by the photographic copy from which I worked.

Q. How about the "Joseph E. Marron" just below that?

A. The "Joseph E. Marron" appearing just below that, appearing over the word "Steiner," here, was written in an indelible pencil on the affidavit of registration which is Government's Exhibit 32, and that is in color black, as against the grayer signature immediately below. I might say that all of the book that I can now recall was written in pencil, I think all of it. Considering further this signature, we have in this signature the word "Joseph"; we have also, as exemplified here from page 100 the name "Joseph" as written by the writer, who wrote the majority of the book, and there we have point by point in the signature "Joseph E. Marron" the same identical features that we have, point by point, in the one in which "Joseph" has been written in this book. We have, first, in the matter of the capital "J" the proportion shown by the upper loop of that "J" to the lower portion, the enlargement of the lower portion, the lower loop of the capital "J" over the degree of ovality of the upper portion, the dark corner made in turning, the apex of that movement

(Testimony of E. O. Heinrich.)

contrasted with the smooth curve of the turn at the bottom of that letter as it comes down from the initial movement into the lower loop; we have a direct connection with the capital "O" the terminal of the "O" brought up to the top of the letter and moving into the next without a loop, as shown in each case, the passing over of the tip of the "s" without a shoulder, and closing with a hook movement that brings the direction well up [278] into the center of the letter, running then into a collapsed "e" immediately preceding the "p" in "Joseph," and passing from the "p" into the word "Joseph" with an upward movement of the stem, which is not retraced on the downward movement of the main letter, finishing the "p" with a large oval such as we found in the earlier specimens of the writing in the book, closing with a buckle which has all of the features of the letter "s," and then finishing with an "h," whose relation to the "p" immediately preceding is that the height is dropped off as the word is coming to a close. We have in the exemplar before us a uniform steady pressure, running to the end of the word, which shows by its shading a similar characteristic to the termins which have resulted in the full expression of that pressure and substroke in "Steiner" and "Marron," and we have that same feature in "Joseph" appearing on page 100. The ink name feature covers the same point, with the difference that the ink writing is much more carefully made, and which has been much more firmly written with an instru-

(Testimony of E. O. Heinrich.)

ment—a slight tremor throughout the writing shows this writer to have some regular difficulty, which does not appear with anywhere near the same frequency in the specimens of the pencil writing as furnished by his signature on the affidavit for election. We have in the "E's" the same "E" formation that we have already pointed out in "Ed," the same "M" formation in "Marron" that we find in "Money," the same "Ae" formation that we have in "Argyle," the same "on" formation that we have in "Money" and in "Personal," and when we come to consider the word "Steiner," we have the same individualism of the hook, the capital "S," with the crossing of the "t" that we find in the word "Stock" which is here exemplified from page 91. On these rounds, from the presence in this signature of these individualisms which are so highly identified, appearing all [279] through the writing in the book, and also in both of these exemplars, I reached the particular conclusion that I have expressed, that the major portion of the entries in the book at page 34 and subsequent thereto are by the same writer who signed this affidavit "Joseph E. Marron," Government's Exhibit 32.

Now, with respect to the five slips of paper which form Government's Exhibit 17, I have stated my answer to the question that it was my opinion that the five slips of paper which are shown here photographically enlarged were all written by the same person who signed the name "George Leo Bird-

(Testimony of E. O. Heinrich.)

sall," and the address 519 Belvedere Street, on Government's Exhibit 31. I first compared these slips with each other to determine if all of these slips were written by one and the same person. I first noticed in reading these slips that four of them bore a date in September, which date is abbreviated "Sept," and followed by a numeral. Now, in each case, in considering the word "Sept," I found that the "Sept" was individualized by having a terminal "t" which consisted of a single stroke, and which had the crossing of the "t" located pretty well at the center of the letter, and which ended in a terminal stroke which diminished towards its end, as is regularly the case where the writing instrument is lifted from the paper while in motion, and which letter was disconnected from the previous letter "p," which preceded it, and that the stem was likewise disconnected from the buckle in each instance, and made as a separate stroke after lifting the writing instrument at the foot of the stem and carrying it to the point at which it is joined to the letter "t" to complete the formation of that letter, and to give it its identity. I found in each instance that the letter "e" of the group "Sept" was proportionately larger than the buckle following the "p," and bore an identical relation also to the "S" immediately preceding it, which was an identical character, [280] and that the "S" in each instance was initiated below the line with what we call a leading stroke, an unnecessary leading stroke, and it was closed in the same way. This first gave

(Testimony of E. O. Heinrich.)

me a tentative conclusion, or primary conclusion that all of these, at least these four "Sept.'s" were written by the same person. I found in addition that the fifth had a terminal "t" appearing in the word "Slot," that this terminal "t" had in every respect the same characteristic forms of the terminal "t" in "Sept."; that in the "S" of that word there was also the same feature as the "S" in the abbreviation for "September," and it also had the diminished letter, the same preceding to the right that we find running across the "t" of "Sept" moving across to the "o" and its further passage with the "t" in the word "Slot"; that led me to the conclusion that the same person who wrote the abbreviation "Sept" had also written the word "Slot," and since the "Slot Machine" is all one continuous page of writing, that that word "Slot Machine" had been written by the same person who wrote the dates. Now, I found in these slips the word "Birdsall" appearing twice, initiated with the capital "B," the word "Bell" appearing once, initiated with the capital "B," and the word "Bivens" appearing once, with a capital "B," and noting the manner in which the turning movement at the foot of the letter runs well below, in fact extraordinarily below the closing movement of the letter, and the manner in which the point of initiation of that letter is related to the central eyelet on the right-hand side of the double oval movement, I then came to this conclusion, that these capital "B's" were all written by the same person, and in

(Testimony of E. O. Heinrich.)
comparing the rest of the writing in these words, particularly the words "Birdsall" with each other, with the first four slips that I have been considering, the dates were written by one and the same person. As to the fifth slip, noting that it was written with the same characteristic diminution of the [281] letters that were found in the word "Machine," with the same writing pressure, and with the same instrument, by the way, the same pencil, I concluded on that basis that all five slips were written by the same person, irrespective of who that person was.

Now, in comparing the occurrence of the word "Birdsall" with the manner in which "Birdsall" appears on the affidavit of registration, I there found letter by letter the same characteristic forms in the exemplar signature that I found on the two slips. In this photograph I show it twice, I show it once on the large photograph, which bears all five of the slips, and I show it again at the foot of these two slips which are brought together, which show merely the name "Birdsall." There, again, in the capital "B" I found the initiation of the letter at a point immediately below the eyelet on the right-hand side, the closing of that letter at a point about midway down or up the initial stem, the collapsing of the "r" following the "i" to such an extent that without context it is indistinguishable from the "i" which immediately precedes it, the elongation of the "d" with respect to the small letters which accompany it, the separation of the "d" from the preceding "r," the separation of the

(Testimony of E. O. Heinrich.)

"s" from the following "a," and the reaching over in constructing the second "a" well over the top of the right-hand side for the initiation of the movement which does not appear on one of the tags, the second one here, but it does on the other; and in the same manner in which it appears in the exemplar; and the termination of the "ll" in "Birdsall" with the downward movement well below the line. I found in "Belvedere St.," the abbreviation "St.," the same individualized manner of forming that terminal "t" that we have in "Sept," and in "Slot," and the same type of leading stroke of the "S" that we find in "Sept," the same "B" in "Belvedere" that we have in "Birdsall" and "Bell," and "Bevins." It was upon these grounds [282] that I came to the conclusion that the writer who signs the name "Birdsall" on Exhibit 31 signed the five slips. Now, I found the name of Birdsall written once or twice in the book Government's Exhibit 3. One of these slips bears the words "Slot Machine." I also found the words "Slot Machine" entered in the gray ledger on one or more occasions. To illustrate the distinction between the writing of these two individuals as shown by their exemplars and by these exhibits, I have brought the words "Slot Machine," as it appears in the ledger in just a position with the "Slot Machine" as it appears on one of these small slips. The upper appearance of the words "Slot Machine" is as appears on the tag, which, in my opinion, was by the writer Birdsall; the lower appearance of the words "Slot Ma-

(Testimony of E. O. Heinrich.)

chine'' is as it appears in the book which I have stated in my opinion was by the writer Marron. The two writings differ from each other notably, first in the manner in which the terminal "t" is finished. Birdsall makes it as a single stroke, disconnected from the three preceding strokes, with a terminal which has an upper direction. The other writer gives a club terminal, which we find in the "l" of "Personal" and the "d" of "Ed," and elsewhere in these exhibits. The writer Birdsall, as he moves along from right to left continues to diminish his letters and his words, as if they were being driven into a cone, or so written that they could be driven into a cone. The other writer writes uniformly along as to the size of the smaller letters. They have that small club-like feature that I have mentioned before, but he includes on the end the hall mark of the club terminal, which is illustrated on the preceding illustration. The capital "N" of the two letters differs in the leading stroke in particular, and the height of the second and third shoulders as they follow. The writer of the book does not have an initial stroke leading up to the apex of his letter. He starts right off without any form of initial [283] movement, and his second and third shoulders do not rise to the same height as is shown by the other writer. The writer in the book makes a capital "S" as an enlarged form of the printed letter, as is shown by the several exemplars that we have brought here. The writer Birdsall makes the capital "S," if we should regard that as being written with a capital "S," as

(Testimony of E. O. Heinrich.)

an enlarged lower-case letter of the letter of the cursive type. We have here a distinctive specimen of the differentiation between the two writers, and I want to point out in the words "Slot Machine" as it appears on the book there appears to be a club terminal such as I have been discussing. I want to point out that it is not the type of club terminal I have been discussing. I have been discussing that type of club terminal which is made by an increase of pressure. Now, in the words "Slot Machine," as written by Birdsall, we have a club terminal which is caused by the shading of the pencil point with which that word was written, and where it was written with a pencil point which was in the shape of a carpenter's chisel point, and that all of these strokes which come in the turning movement, which were on the narrower side of the chisel, are representative of the thickness of the chisel point; all of the side swipes of that point show what appears to be a shaded feature. In starting a club terminal of the writer Marron we have that feature developed as a feature of the pressure applied to a round point and increased definitely and continuously until the end of the movement is reached.

Mr. GILLIS.—I now ask that these illustrations which have been put on the blackboard by the witness be introduced in evidence and be marked in the order in which they appear on the blackboard.

Mr. O'CONNOR.—As to the defendant Mahoney, they are objected to on the ground they are immaterial, irrelevant and incompetent, and no foundation laid for their introduction.

The COURT.—Overruled. [284]

Mr. O'CONNOR.—Exception.

Mr. SMITH.—May the record show an objection on behalf of the defendants Marron and Birdsall on the same grounds stated originally when the book, itself, was introduced and the papers were introduced?

The COURT.—Yes; the same ruling.

Mr. SMITH.—Note an exception.

(The illustrations were marked U. S. Exhibit 38.)

Mr. GILLIS.—Q. I show you Government's Exhibit 3, page 69, the lower two words on that page: Have you examined the word beginning with "P" to determine what that word was?

Mr. SMITH.—At this time, may it please the Court, counsel for the Government directs the witness' attention to the word, or the two words on the bottom line that were in dispute yesterday. At that time we had the man who wrote the words on the stand and he stated that to the best of his knowledge what those words meant was "New Policy."

Mr. GILLIS.—He stated he *guess* it was.

Mr. SMITH.—I don't think it is within the province of an expert on handwriting or otherwise, to come in and give his opinion as to what those words are when we have had the person who wrote the words present and testify.

The COURT.—Mr. Smith, if he had stated positively that those words meant "New Policy" and not "New Police," perhaps the situation would be different, although I do not think even that would exclude the Government from showing that it was

(Testimony of E. O. Heinrich.)

something else. But he did not say that. He said that it looked like to him "New Policy," and that he had no recollection whether it was "New Policy" or not.

Mr. O'CONNOR.—Will your Honor pardon me a minute while I get the record?

Mr. GILLIS.—Here is the testimony of the witness. In answer to [285] a question by the Court, "Is it 'New Policy' or 'New Police'?" the answer was, "It looks like 'Policy' here."

Mr. O'CONNOR.—Read on further.

The COURT.—Did I not ask a further question, as to which it was, or if he had any recollection?

Mr. SMITH.—You asked him the question, "Is it 'New Police' or 'New Policy,' " and he said, "It looks like 'Policy' here."

Mr. GILLIS.—And the question, "Do you remember?" and the answer, "I do not recall the item."

The COURT.—I felt sure of that. He may answer.

Mr. O'CONNOR.—May we have the further objection that it is an attempt on the part of the prosecution to impeach their own witness?

The COURT.—Overruled. You may answer.

Mr. O'CONNOR.—Exception.

Mr. SMITH.—May an exception also go to the defendants Birdsall and Marron?

The COURT.—Yes.

Mr. GILLIS.—Q. What is it?

A. It was originally written "Police" and by the

(Testimony of E. O. Heinrich.)

addition of two strokes the "e" was corrected to a "y."

Q. Is the correction that you see there made with the same lead pencil that wrote the word "Police"?

A. It was not.

Q. Mr. Heinrich, did you make some photographic copies of items coming from U. S. Exhibit 3, a typewritten page?

A. Yes, I made three of them.

Mr. GILLIS.—I will state to the Court that these are excerpts from Government Exhibit 3 that is in evidence, and I simply ask their introduction in evidence for the purpose of illustration.

Mr. SMITH.—What for?

Mr. GILLIS.—For the purpose of illustration.

Mr. SMITH.—Illustration of what?

Mr. GILLIS.—Take a look at them and see, Mr. Smith.

The COURT.—These are not photographs of the book. [286]

Mr. GILLIS.—These are not photographs of the book.

The COURT.—They are an enlargement of typewritten recapitulations?

Mr. GILLIS.—Yes, of excerpts from the book.

The COURT.—The only purpose they could have would be for use on the argument.

Mr. GILLIS.—Yes.

The COURT.—They will be admitted.

Mr. SMITH.—We will object to their introduction upon the ground that they are immaterial, ir-

(Testimony of E. O. Heinrich.)

relevant and incompetent, and they are not binding upon any of the defendants, and this is a self-serving paper, that is, a paper that was prepared by the Government to serve its own purposes, and could not possibly be binding on the defendants.

The COURT.—No, but from time immemorial, in order to aid the jury, the Court has permitted enlargements of these things which were in evidence—a recapitulation of them. Overruled.

Mr. SMITH.—There is nothing like this in evidence.

The COURT.—The objection is overruled.

Mr. SMITH.—We note an exception.

(The photographs were marked U. S. Exhibit 39.)

Mr. O'CONNOR.—An exception as to the defendant Mahoney?

The COURT.—Yes.

Mr. KELLY.—And as to all of the defendants?

The COURT.—Yes.

Mr. GILLIS.—You may cross-examine.

Cross-examination.

(By Mr. O'CONNOR.)

I was called in this case by the District Attorney and I do not know whether a subpoena has been issued for me or not. I first conferred in this case with Mr. Oftedal on or about November 22, 1924. I made photographic copies of these documents at that time. I completed the photographic copies November 28th. I am a paid expert [287] on behalf of the Government and am receiving in com-

(Testimony of E. O. Heinrich.)

pensation $25.00 a day for all time spent on the case. I first saw Government's Exhibit 18 in evidence on or about November 30th and it was delivered by Mr. Oftedal's staff.

(Rep. Tr., pp. 22 to 248 inc.)

TESTIMONY OF JOHN J. CASEY, FOR THE GOVERNMENT (RECALLED—CROSS-EXAMINATION).

JOHN J. CASEY, a witness on behalf of the Government, recalled for further cross-examination.

Cross-examination.

(By Mr. TAAFFE.)

I have received the reports of the chief that the sergeants and officers rendered with respect to their activities in the investigation of the premises at 1249 Polk Street. My orders to my men were given pursuant to an order or communication from the chief of police with reference to this place. These reports were rendered by the officers and sergeants in charge of the squads, as a result of my investigation in my official capacity, being received by the platoon commanders and in turn handed over to me. I recognize the handwriting in these instruments.

Whereupon, after argument by counsel, the reports were admitted in evidence and read into the record.

Mr. TAAFFE.—May I read these in evidence, if your Honor please?

The COURT.—Go ahead.

Mr. TAAFFE.—On the stationery of the police department, city and county of San Francisco, Police District No. 5, Bush Street Station, San Francisco, Cal., March 30, 1924.

"Captain John J. Casey:

Sir: I respectfully report the following:

Relative to the complaint from the Chief's office about bootlegging being carried on at 1249 Polk Street, upon investigation, I find that this is a six room flat occupied by a man named Birdsall. I have had an interview with the latter at said address [288] in regard to the above, and he denied that bootlegging is being carried on in his place. I went through all of the rooms in the flat and didn't see any evidence of liquor there." Signed: "Patrick Kissane, Police Officer, Star #80."

The COURT.—No need of reading the formal parts.

Mr. TAAFFE.—Another letter on the same stationery, Police District 5, dated March 29, 1924:

Captain John J. Casey,

Sir: I respectfully report the following: "Relative to the information received by the Chief of Police of the illegal sale of liquor at #1249 Polk Street, I called at said place at 10:50 A. M. this date; it is a flat occupied by Mr. George Birdsall for some time past. I saw no evidence of the sale of liquor." Signed by "John J. Farrell, Sergeant of Police." Also, on similar stationery, dated

March 30, 1924, addressed to Captain John J. Casey:

"I respectfully report the following: In regard to the complaint from the office of the Chief of Police regarding bootlegging being carried on at 1249 Polk Street, I visited this address, which is a top flat, occupied by a man by the name of George Birdsall as a residence, and I saw no evidence of liquor in the place. I will give this complaint my attention in the future. James A. Foohig, Police Officer."

Another dated March 29, 1924, to Captain John J. Casey:

"Relative to the complaint from the office of the Chief of Police about bootlegging being conducted at 1249 Polk Street. This is a 5-room flat occupied by George Birdsall, as a residence. I have never received any complaint about bootlegging being conducted at this place, and in the future will keep this place under observation. Robert E. Garrick, Police Officer."

Another dated March 28, 1924, to Captain John J. Casey, Subject Bootlegging 1249 Polk Street. 1249 is a flat occupied by George [289] Birdsall. He has been there for several months. I have never received any complaints of bootlegging or otherwise from premises since Mr. Birdsall has occupied the place. James M. Mann, Police Sergeant."

Another dated March 30, 1924, "Captain John J. Casey, Subject bootlegging, 1249 Polk Street. The

(Testimony of John J. Casey.)

above premises is a 5-room flat occupied by George Birdsall. I visited the premises and interviewed Mr. Birdsall. I saw no evidence of the law being violated, and I have never had any complaint from this place. I will keep this place under observation. Goodman H. Lance, Sergeant."

Q. Those reports were received by you in your official capacity as captain of the district, were they? A. Yes.

Q. The Mann that I have referred to is not a police officer?

A. He is a sergeant of police, and Lance and Farrell are sergeants.

Mr. TAAFFE.—That is all.

Mr. SMITH.—No questions for the defendants Birdsall and Marron.

Mr. O'CONNOR.—No question as to the defendant Mahoney.

Redirect Examination.

Mr. GILLIS.—One other report I see here from Patrick Kissane. We might as well have them all. That was received by you, was it? A. Yes.

Mr. GILLIS.—I ask that this be introduced in evidence.

(The document was marked U. S. Exhibit 40.)

"Report by Patrick Kissane: Suspected illegal liquor selling 1249 Polk Street flat second floor. George Birdsall, Proprietor."

Q. Captain Casey, you said on your cross-examination that Mr. Birdsall told you in his conversa-

(Testimony of John J. Casey.)

tion with you that the police had made several searches for liquor, there. A. Yes.

Q. Did you ask him what members of your squad had made the searches?

Mr. O'CONNOR.—That is objected to on the ground it is not proper redirect*ed* [290] examination.

The COURT.—Objection overruled.

Mr. O'CONNOR.—Exception.

Mr. SMITH.—The same objection as to the defendants Marron and Birdsall, and exception?

The COURT.—Yes.

A. I don't remember asking him that question, Mr. Gillis.

Mr. GILLIS.—Q. Did you ask him how much they searched?

A. I could not say that I did.

Q. Did you ask him where they searched?

A. I did.

Q. What did he say?

A. He said that they went through the place.

Q. Is that what he said, they went through the place? A. Yes.

Q. Did he tell you at that time that he was selling liquor there at that place?

Mr. O'CONNOR.—That is objected to on the ground it is leading and suggestive, and not proper redirect examination.

The COURT.—I will allow it.

Mr. O'CONNOR.—Exception.

A. He told me that he had been, yes.